No. 14197

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

CONSOLIDATED FOODS CORPORATION,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set Aside Order of the Federal Trade Commission

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Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Glen Eugene Knaub.

Q. Where do you live?

A. At 19 Ewan Terrace, Vineland, New Jersey.

Q. What company are you with?

A. P. J. Ritter.

Q. Where is the central office of that company?

A. Bridgeton, New Jersey.

Q. Does the P. J. Ritter Company have any divisions?

A. Yes.

Q. What is the name of the division, sir?

A. Brooks Foods, Inc.

Q. Where are the offices of Brooks Foods, Inc.?

A. Collinsville, Illinois.

Q. When did the Ritter Company acquire the Brooks Foods Company?

1210 A. April 1, 1959.

Q. In prior years, was the Brooks Foods Company known by any other name?

A. Yes. G. S. Suppiger Company.

Q. Until what year was it known as the Suppiger Company?

A. Approximately 1947.

Q. And when was the name changed from Suppiger to Brooks?

A. I am not sure of the exact date. It was prior to our acquisition.

Q. I misunderstood you, Mr. Knaub. Do I understand correctly that the name was changed from Suppiger to Brooks as early as 1947?

A. I believe that's correct.

Q. Are you sure it isn't 1957, Mr. Knaub?

A. I don't know.

Q. How long have you been with the Ritter Company?

A. Since 1948.

Q. What is your present position with that company?

A. Vice president.

Q. What are your responsibilities as vice president?

A. Operating policy and general manager.

Q. Do you have any responsibilities in connection with the Brooks Foods Company?

A. Yes.

Q. What are those responsibilities?

1211 A. Vice president and general manager.

Q. For how long have you held precisely the same positions that you hold now, Mr. Knaub?

A. For approximately two and a half or three years.

Q. And the only change would be that prior to 1959, you had no responsibilities for the Brooks Foods Company because it was not acquired until that year, is that right?

A. That's correct.

Q. Up to the time about two and a half years ago, which you have just mentioned, what were your responsibilities with the Ritter Company?

A. Vice president for procurement.

Q. And what position did you hold before you were vice president for procurement?

A. Director of purchases.

Q. When did you become director of purchases?

A. October 1948.

Q. In what business is the Ritter Company engaged?

A. Manufacturing of food products.

Q. Would you please describe the principal products of the company?

A. Asparagus, tomato catsup, tomato juice, relish, pork and beans, butter beans, blueberries, diced peppers, and I think that covers all of the products.

Q. Do you also have a vegetable juice cocktail?

1212 A. That's right.

Q. In what business is the Brooks Foods Company engaged?

A. They are in the food processing business as well.

Q. Could you describe some of their principal products, please?

A. Tomato catsup, tomato juice, barbecue sauce, chile hot beans, soups, pork and beans, and butter beans.

Q. Are the Ritter Company and the Brooks Company operated as a unit or separately?

A. They are operated as separate divisions.

Q. To whom do Ritter and Brooks sell their products?

A. Wholesale distributors.

Q. Are any sales made direct to retail grocery chains?

A. Yes.

Q. And are any products sold to the institutional trade?

A. Yes.

Q. Direct or through distributors?

A. Mostly through distributors.

Q. Through what channels do Ritter and Brooks sell their products?

A. Food brokers.

Q. Under whose labels are the Brooks and Ritter products marketed?

A. Mostly marketed under Ritter and Brooks brands.

Q. What are those brands, sir?

1213 A. Ritter and Brooks.

Q. What is the balance of the business?

A. Private label.

Q. That is private label packing for your customers under their labels?

A. That's correct.

Q. What products has the Ritter Company sold to Consolidated Foods Corporation?

A. Practically the entire line: asparagus, tomato juice, catsup, blueberries, vegetable juice, pork and beans, butter beans.

Q. Is this also true of the Brooks Foods Company?

A. Yes.

Q. That is, they have sold practically their entire line to Consolidated?

A. The line of products that they pack, that's right.

Q. Under whose labels have Ritter and Brooks sold to Consolidated?

A. What is the question again?

Q. Under whose labels have Ritter and Brooks sold to Consolidated, under the Ritter and Brooks labels or under Consolidated private label?

A. They have sold some under private label.

Q. Most of it has been under your own labels?

A. Correct.

1214 Q. How long has Ritter been a supplier to Consolidated?

A. For at least 12 or 14 years that I know of.

Q. About what was the volume of Ritter's sales to Consolidated in 1950, Mr. Knaub?

A. Approximately $50,000.

Q. And what was the volume of Ritter's sales, approximately, to Consolidated in 1958?

A. Approximately $58,000.

Q. Between 1950 and 1958, Mr. Knaub, were Ritter's sales to Consolidated materially higher than the figures you have given in any of those years?

A. Will you repeat that, please?

Q. In the years between 1950 and 1958, were Ritter's sales to Consolidated materially higher than the figures that you have given for 1950 and 1958?

A. Yes. In 1951, they were approximately $151,000, and in 1955, they were approximately $208,000.

Q. Do you know the reason for the increase in sales to Consolidated in the years 1951 and 1955?

A. Those were years in which we packed quite a bit of private label merchandise for Consolidated.

Q. In the period from 1950 to the present time, what has been the approximate total volume of the Ritter Company's sales?

A. About five to six million dollars.

1215 Q. Mr. Knaub, in what products has the Ritter Company used onion and garlic?

A. Tomato catsup, vegetable juice cocktail, pork and beans, relish, and Mexicale butter beans.

Q. Has the Ritter Company ever used any fresh onion?

A. Yes.

Q. In what products have you used fresh onion?

A. It is used in vegetable juice coktail and relish.

Q. Have you used the fresh onion consistently in your relish?

A. No.

Q. In which of Ritter's products are dehydrated onion and garlic used?

A. Catsup, pork and beans, Mexicale butter beans.

Q. From 1948 to 1958, Mr. Knaub, who made the decisions for Ritter as to your source of supply for dehydrated onion and garlic?

A. I did.

Q. Would you please describe, Mr. Knaub, the actual procedure followed by your company in deciding on its source of supply for raw materials such as onion and garlic?

A. First of all, we would obtain a sample of the merchandise that we would need. That would be submitted to the quality control department, which would analyze it

and the product and the supplier would be approved

1216 by them as a suitable source of supply. At that point,

purchasing would take over and buy whatever requirements were needed on the basis of quality, service, price.

Q. From what companies has Ritter bought its dehydrated onion and garlic?

A. Basic Vegetable Products, Gentry, Simplot, and Baltimore Spice Company.

Q. When did you purchase from the Baltimore Spice Company?

A. Approximately 1958.

Q. Do you recall the amount of that purchase, Mr. Knaub?

A. No, not exactly. I would say in the neighborhood of 15,000 pounds.

Q. What was the reason for that purchase? Do you remember that?

A. These people had a quality control man who was very adept at handling formulas and he helped us to reformulate some of our products for better quality. Since they were selling onion products, we felt that we should give them some business because they could offer the same quality and the same price and the same service as what we were getting from our other sources of supply.

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1218 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 126 for identification, was received in evidence.)

By Mr. Walker:

1219 Q. Directing your attention to Respondent's Exhibit 126, this indicates that the Ritter Company purchased substantial quantities of dehydrated onion from Gentry in 1946 and 1947, along with some garlic, but thereafter most of your company's requirements were obtained from Basic. What is the reason for that shift in about 1949—1948 or 1949?

A. In 1947 we changed heads in the quality control department, primarily for quality reasons. At that point, he rolled out Gentry and their onion products because there was not uniformity of flavor or pungency. He was com-

plaining of stem ends and burnt pieces and just a general poorer quality of product than was available for use from other sources.

Q. And why was Basic chosen as the source of supply?

A. In his estimation and in ours, it was a better quality product on the market.

Q. Prior to 1948, Mr. Knaub, was Gentry your exclusive source of supply for dehydrated onion and garlic?

A. Prior to 1948?

Q. Yes, prior to 1948.

A. I couldn't be sure of that.

Q. Is it your recollection that most of the onion and garlic was bought from Gentry prior to 1948?

A. That would be my recollection, yes.

Q. Mr. Knaub, this exhibit shows that the Ritter Company purchased about 6,000 pounds of onion from
1220 Gentry in 1950. After this quality trouble that you have described, why did you make this purchase?

A. Well, I took over in 1948. I took over the purchasing department. I felt that in all of our major supplies that we used we needed two sources of supply. Since we only had one on onion and garlic, this was a trial order to try to get that second source of supply. After all, we are in a seasonal business. When we need something, we need it, because there are only probably six weeks in which to pack our major commodities.

Q. Would you explain why this seasonal need — what relationship that has to your desire for a second source of supply?

A. For instance, one company could have a strike in their warehousing department which would not affect the warehousing department of another supplier, so we wanted to be in a position where we could get supplies from one or the other. Because if we have tomatoes in the field with no onion, we could make catsup, but it wouldn't be very

good catsup. By the same token, we can't afford to bring our supplies of onion products in four to six weeks or even four to six months prior to the packing season.

Q. Aren't there some advantages to using a single source of supply for raw materials?

A. Not to any great extent, in my estimation, because everybody is competitive and if you buy in worthwhile
1221 quantities, follow the lowest possible freight rates, you are in a better position having two sources of supply than just having a single source of supply.

Q. After this 1950 purchase from Gentry, why did the Ritter Company not buy anything from Gentry in 1951?

A. We had the same quality problem all over again.

Q. This is the same quality defect or defects that you testified to?

A. Defects, stem ends, flavor pungency, non-uniformity of flavor. This material basically going into relish both has eye appeal and a very delicate flavor. You can't play with anything that isn't top quality.

Q. But then, Mr. Knaub, you bought 30,000 pounds from Gentry in 1952. Why was that?

A. Well, after all of these problems, the sales department being a normal sales department, being very aggressive and working with our quality control people, came along and said, "Well, we guarantee that we can give you quality equal to Basic or better." On the strength of that and this desire to have this second source of supply, which is one of the major items where we did not have a second source of supply, we took it on on the basis of their guarantee.

Q. Whose sales department were you referring to now?

A. Gentry's.

Q. Who was the Gentry salesman calling on you
1222 at that time, do you remember?

A. Either Al Powers or Oscar Schek.

Q. Why did Ritter's purchases from Gentry drop back again to the 5,000 pound level in 1953?

A. The same problem haunted us even on the guarantee. There was quite a lot of discussion and fireworks between our quality control department and Gentry's quality control department on the basis of this guarantee. However, we did buy some which, I would guess, was powdered which went into pork and beans.

Q. Why then, Mr. Knaub, do your purchases from Gen- Gentry pick up again in 1954 and continue in substantial amounts thereafter?

A. At that point, as I recall, they made some changes in their processing equipment, in their methods, which they claimed would give a very uniform quality product and which has from that point on.

Q. Do you recall what those changes in processing methods were, Mr. Knaub?

A. Not too specifically, except that I know it had something to do with the method of conveying the raw onion through the dehydrating ovens, which apparently is one of the very important factors in getting uniform quality and retaining the pungency of the onion.

Q. Directing your attention again to this exhibit, since 1954, it appears that Ritter has split its business 1223 between Gentry and Basic, but gives to Basic the larger share of the business. How have you determined how much business to give to Gentry and how much to Basic during these years?

A. Well, if you are going to have a second source of supply, you have to work with reasonable quantities. There is also the matter of truckloads or carloads so that you buy in the most economical quantities. That in itself determines to some degree minimum purchases. Naturally, the major source of supply is going to get the bigger share of the business, and this came out at about two-thirds for

Basic and one-third for Gentry, but you can't buy on the nose. You can't just look at your requirements and if there are 100,000 pounds, well, say, 66,000 goes one place and 33,000 goes somewhere else, because you have a factor within that of your season changing upward and downward. Therefore, you have to adjust within that framework.

Q. You said, Mr. Knaub, that when you have a second source of supply, you have to buy from your second source in reasonable quantities. Why is that?

A. Well, probably it is an old-fashioned idea, but I have always felt if you are going to work with a supplier, it has to be in a quantity where both can do a satisfactory service job for the other. You can't ship 500 pounds to a customer and give him the same kind of service as you can shipping 25,000 pounds. Service is the thing that we need in our business because of our short packs.

1224

Q. Other than the factors that you have mentioned, Mr. Knaub, are there any other factors that have entered into your decision to buy from Gentry since 1950?

A. No.

Mr. Walker: Let the record show that Commission Exhibits 63, 64 and 65 have been handed to the witness, the Hearing Examiner and opposing counsel.

Q. Would you let me know when you have finished reading these, please?

A. Yes.

Q. These documents are already in evidence in this case, and they purport to be copies of correspondence between Mr. Nathan Cummings, who is the chairman of the board of Consolidated Foods Corporation and Mr. William Ritter, Jr. of the Ritter Company, and this was in April of 1954. Had you ever seen this correspondence prior to this year?

A. Yes.

Q. Please describe the circumstances which occurred at the time that you saw the correspondence.

A. This letter to Mr. Ritter was given to me; I recall seeing this.

Q. Is that Exhibit 63?

A. Yes, because Mr. Ritter wouldn't know anything about what the details of purchasing were or whom our sources of supply were, other than in a very, very
1225 general way. In order for him to reply to this letter —in fact, I have a feeling that I gave him that part of the reply that refers to the quality and the problems we were having. This detail he would not know.

Q. When you say "that part of the reply," that is a reference to the document that is Commission's Exhibit 64?

A. Yes, 64A.

Q. Did you discuss this matter with Mr. Ritter at that time?

A. Only as far as this reply is concerned

Q. And did you explain to him your purchasing policies that you had been following in this area?

A. I don't recall that we did at that time. The purchasing policies were cleared, as a matter of fact, in our operating policy committee meetings which were held monthly, so that things such as this would be cleared there or any policies would be cleared there so that purchasing could operate freely whenever they had something to purchase.

Q. Mr. Knaub, what effect did Mr. Cummings' letter to Mr. Ritter have on your purchases of dehydrated onion and garlic from Gentry?

A. It had none as far as I am concerned.

Q. Is Mr. Ritter still alive, Mr. Knaub?

A. No; he died June 2nd of this year.

Q. I would like to ask you one other question about
1226 the circumstances surrounding the correspondence that we were just talking about between Mr. Ritter

and Mr. Cummings. Did Mr. Ritter give you any instructions at all at that time in regard to where you should purchase your dehydrated onion and garlic?

A. No.

Q. This is Commission's Exhibit 210, also in evidence in this case, and which is a report or a copy of a report made by a Basic salesman, apparently written on July 1, 1954. Would you read that, please, Mr. Knaub?

A. Yes.

Q. The initials of the salesman on this report are "LTD." Do you know who that is?

A. Yes, Lyle T. Dawe.

Q. I want to read you a statement from this salesman's report and then ask you a question about it. The report states as follows: "I understand that Gentry has a contract with the Ritter Company on No. 10 diced peppers under the Gentry label that has been placed by Consolidated Grocers for products this year, and because of Consolidated Grocers placing this business with P. J. Ritter Company, the Ritter Company will give then 25 percent of their onion and garlic business."

My question is this: Did you give onion and garlic business to Gentry because you were packing the diced
1227 bell peppers for them?

A. No, sir.

Q. Mr. Knaub, this is a copy of Commission's Exhibit 211, which is another one of the sales reports made by a Basic salesman on January 21, 1955. Have you read this?

A. Yes, I have.

Q. Directing your attention to the second sentence appearing at the bottom of the exhibit, which states, "They gave us 75 percent of their business last year and 25 percent to Gentry because they are selling them canned red peppers and also Consolidated Foods wholesale grocery divisions are selling Ritter consumer-size canned products,"

and I would like to ask you one question about that, Mr. Knaub. Did you give any business to Gentry because you were selling them canned red peppers or because Consolidated's wholesale divisions were selling your consumer-size canned products?

A. No.

Q. In October of 1958, in this case, Mr. Robert Sparling, the sales manager for Basic Vegetable Products, testified that Basic had been losing business with the P. J. Ritter Company because of the relationship between Gentry and Consolidated. Is that true?

A. No.

Q. Would you please explain the basis for your statement that the statement is not true? Do I make myself clear? In other words, why do you say that Mr. Sparling's testimony was not correct?

1228

A. As I said earlier, we wanted a second source of supply. We had hoped that our volume of production would grow so that introducing a second source of supply would not change too much the purchases of the major supplier. However, that is what you plan, but it didn't work out that way. In having two sources of supply, naturally, the larger source of supply did get a reduction, but it was not based on the fact that we were selling No. 10 diced peppers. I happen to be—I won't say in the unfortunate position—but as well as being director of purchases, I was sales manager of what we call our custom packing division, which is another way of saying private label, and we were selling these diced peppers then to anybody who would buy them under a Ritter label or under a private label, and we still do today. Therefore, in selling Gentry these peppers, I had my selling clothes on; and when I was buying onion products, I was over in the purchasing department.

Q. Were there any factors, Mr. Knaub, other than your purchasing larger quantities from Gentry in

1229

some of these years, that caused your purchases from Basic to decrease?

A. Well, when we purchased—during a time that we purchased some onion products from Baltimore Spice, that would have come out of the so-called portion that would go to Basic. About 1957, if I recall correctly, we used quite a bit of fresh onion in relish. Some of the boys who had been there for many years felt that the first relish formula with fresh onion was the best relish we ever turned out. We decided to try to prove once and for all whether we should use fresh onion or dehydrated onion. When the experiment was over, nobody could tell the difference in the flavor, but they could tell the difference in the cost. The dehydrated onion was cheaper because that year the fresh onion market was high, and this was the end of using fresh onions in relish. I don't recall the quantity, but we used quite a lot of fresh onion and that cut down on the amount of dehydrated onions we purchased.

Q. Did you discontinue packing any products during the 1950's, as you recall?

A. In the early '50's, we discontinued pork and beans, which was a sizeable volume item and mostly under private label.

Q. Did you use onion and garlic in those products?

1230 A. We used both onion and garlic in pork and beans, but they were discontinued for economic reasons.

Q. Has the amount of your packing of catsup had any influence on your purchases of dehydrated onion and garlic?

A. Yes. We are producing less catsup in the last five years than we did prior thereto; let us say, prior to 1957. It was, as I recall, early in 1957 when one of the large manufacturers in the catsup business reduced his price by 85 cents, which gave him a lot of volume but gave us a lot of headaches and took some of our share of the market.

Q. When you reduced your purchases of dehydrated onion and garlic for the reasons that you have been talking about here, Mr. Knaub, did you try to reduce proportionately your purchases from both Basic and Gentry?

A. We tried, yes, but again I say that you can only reduce it to a certain level. Beyond that you reach an uneconomical factor. Freight is a very important factor in today's costs, in an item like this coming all the way across the country.

Q. Mr. Knaub, I have explained to the Hearing Examiner that we have discussed this case recently. Before that time, and other than the conversation about the correspondence between Mr. Ritter and Mr. Cummings which you have described, did you ever talk to anyone about a relationship of any kind between Ritter's sales to Consolidated and
1231 its purchases of onion and garlic?

A. No.

Q. Other than the conversations which I described in the preceding question, have you had any kind of a communication about that subject?

A. Not that I recall.

Q. Mr. Knaub, what effect has the fact that Consolidated is a customer of Ritter had on the volume of your purchases of dehydrated onion and garlic?

A. Will you state that again, please?

Q. What effect has the fact that Consolidated is a customer of Ritter had on the volume of your purchases of dehydrated onion and garlic?

A. It didn't have any effect.

Q. How long has the Brooks Foods Company been a supplier to Consolidated?

A. First, I know about it for 12 or 14 years or more.

Q. On what do you base that information?

A. On the information which they tabulated for this case.

Q. Since 1950, do you have any information as to how large the Brooks Foods Company sales to Consolidated have been?

A. They range from $25,000 to $40,000.

Q. And what is the source of that information?

A. Our credit department, Brooks' credit department.

Q. Those figures you gave were annual figures;
1232 that is, $25,000 to $40,000 per year?

A. Yes.

Q. How does the figure of $25,000 to $40,000 per year compare with the Brooks Foods Company's total sales?

A. Less than one percent.

Q. In what products, Mr. Knaub, has the Brooks Company used onion and garlic or capsicums?

A. Catsup, chili hot beans, barbecue sauce, pork and beans.

* * *

1233 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 127 for identification, was received in evidence.)

Q. Directing your attention to Respondent's Exhibit 127, do you know why Brooks has bought onion and garlic from Puccinelli in the years 1949 to 1958?

A. No. From what I gleaned in the short period of time that we have had this company, they were very happy
1234 with the service, the price and the terms. That is the major reason for staying with Puccinelli, but here, again, we are introducing the second source of supply, which in this case is Basic.

Q. About how large have been the Brooks Company's capsicum requirements each year since 1951, Mr. Knaub?

A. Around a hundred thousand pounds.

Q. Do you know whether Brooks has purchased any of its capsicum requirements from Gentry in the years 1951 through 1958?

A. I don't think so.

Q. That is, you don't think that they have bought any from Gentry?

A. I don't think they have bought any from Gentry.

Q. And what is that answer based on, Mr. Knaub?

A. Just my general knowledge of working with the company.

Q. Since it has been acquired by the Ritter Company, is that right?

A. That's right.

1235 *Cross Examination*

By Mr. Hays:

Q. Mr. Knaub, is the P. J. Ritter Company now associated with any other corporation?

A. Are they associated with any other corporation?

Q. Yes.

A. No.

Q. They are still an independent corporation?

A. That's right.

Q. Has any of the stock of the P. J. Ritter Company been purchased by Consolidated Foods?

A. I wouldn't know. I have no knowledge of it.

Q. With reference to private label sales, do you find that your sales of private label have varied from year to year to any great extent?

A. They may have varied by commodity, but if you are talking dollar volume, no.

Q. They have varied by commodity, have they, to some extent?

A. Yes.

Q. Since 1946?

A. Yes.

Q. Will you describe just what causes this variance?

A. Seasonal, primarily. In other words, in a short

tomato season, where the crop is short, Ritter would favor —would have to favor its own shelf items under its
1236 own brand and not package much for private label, because their policy is that they only use their facilities for private label when they are not busy on their own label.

Q. In other words, you would prefer to sell products under your own Ritter labels?

A. That's correct.

Q. Why is that, sir?

A. Because where you have a consumer market, you have a more stable business. If you have a consumer market for your own brand, you are more stable.

Q. If you have a private label brand, purchases by that private label owner are completely at his discretion, is that correct? You have no control over those purchases, the amount or quantity?

A. We would have no control over the quantity or how much he purchases, that's correct.

Q. Is it necessary to have a consumer demand for your own Ritter labels before they are sold to a wholesaler or a retail store?

A. Is it necessary to have a consumer demand before you sell them?

Q. Yes.

A. Well, it is helpful.

Q. To what extent is it an important factor, the consumer demand?

1237 A. Well, if you have a consumer demand, your product is more easily sold to the distribution outlets than if you do not have that consumer demand.

Q. During the period from 1946 to the present, in what products have you used raw onion?

A. In what products?

Q. Yes, sir.

A. Vegetable juice cocktail and relish.

Q. Have you ever used dehydrated onion for vegetable juice cocktail?

A. No.

Q. Why?

A. Because we like to say it is made from fresh vegetables.

Q. During the period from 1946 until 1956, did you use any raw onions in your relish?

A. What were those years?

Q. From 1946 through 1956.

A. I couldn't be positive if we haven't used some on an experimental basis every now and then. Most of our fresh onion usage was for the vegetable juice cocktail.

Q. If any raw onion was used in your relish during that period, it was on an experimental basis?

A. Yes.

Q. In 1957, you used raw onion in your relish, is that correct?

1238 A. Yes, for approximately 50 percent of the pack.

Q. Will you describe the manner in which you used this raw onion in your product and how it differed from the manner in which you used the dehydrated onion in your relish product in 1957?

A. You mean by that how we prepare it?

Q. Yes, sir, purchase and prepare it.

A. Well, first, we purchased from local grocers. Then we have to have coring and peeling equipment. After you peel and core the onion, then, of course, you have to grind it or dice it and then it is introduced into the relish product. In the case of the dehydrated onion, of course, it comes in drums and those flakes are introduced directly into the process of making the relish, so that you do not have the labor involved in the dehydrated. It takes substantial amounts of labor to peel and core the onions. You nat-

urally have a certain amount of loss on the fresh onions in your peeling operation. Then you have a market factor as to the comparable cost.

Q. What is that market factor as to a comparable cost? What was it in 1957?

A. In this particular case, I think they cost about twice as much. The fresh onions cost about twice as much as the dehydrated. This would happen to be a year in which the onion crop was relatively short. When you make
1239 a decision and move into a season, you are stuck with it. You can't back off. The onion market was high, but this is typical, because there is a timing factor in every one of these crops. When that peak crop hits, and that isn't necessarily the time that we are packing relish—therefore, we can't buy the fresh onions at the cheapest point in many seasons, because our relish pack comes later than the onion season, so we are buying on a high-priced market. If you store them, then you have a shrinkage factor, again.

Q. Where did you obtain the machines to do the peeling and coring and so forth?

A. Where did we what?

Q. Obtain them?

A. Some manufacturer on the west coast.

Q. Do you still have those machines?

A. To the best of my knowledge, they are still around, yes. It seems like they are sticky equipment to sell.

Q. You can't get rid of them?

A. Well, we want to give them away. They are much nicer to look at. That is a reminder, "don't do it again."

1240 Q. I show you, Mr. Knaub, Respondent's Exhibit No. 126 and I direct your attention to the years 1946 and 1947. I also direct your attention to the years 1948, 1949, 1950 and 1951. In each of those years, did you have alternative sources of supply for dehydrated onion and dehydrated garlic?

A. Did we have alternative sources of supply?

Q. Yes.

A. I can't answer for 1946 and 1947 specifically, not having been associated with the company.

Q. In each of those other years, did you have the alternative source of supply for these products?

A. There was a source of supply, but we were not using it.

Q. Why did you not use an alternative source of supply in each of the years 1948 through 1951?

A. We started to use a second source of supply as soon as we could get around to it. You see, you are saying when they swung from one source of supply, presumably one source of supply, they went completely to another. In 1948 I was introduced into the picture and I wanted a second source of supply, and went after a second source of supply.

Q. And you did not obtain it to any extent in 1949, did you?

A. No. That was the first seasonal pack which I went through with in the employ of the Ritter Company.

Q. What about the year 1951. You had been there several years by that time. Why had you not made use of an alternative source of supply for dehydrated onion and garlic in 1951?

1241

A. Because we tried out the Gentry product and it wasn't satisfactory. Therefore, you only have six, eight or ten weeks in which to get these in and try them.

Q. Did you try the products of any other company?

A. No.

Q. Did you know that any other companies existed that processed and sold dehydrated onion and garlic in 1951?

A. I knew that they existed. However, they were not aggressively selling their product.

Q. And you did not aggressively attempt to obtain them as an alternative source of supply in 1951, did you?

A. Well, that is a question. Aggressively?

Q. Yes. What did you do in 1951 to obtain an alternative source of supply?

A. I can't say specifically. After all, those are part of a general method of doing business. We were getting samples, but again I repeat that nobody was aggressively selling onion products. In fact, we had to write to some of these people who were packing it and then eventually we would get a letter from a broker, finding that a broker was within 75 or 100 miles but had never called on us. I am sure that we tried to obtain samples.

Q. Did you try to obtain samples?

1242 A. Either me or my people.

Q. Who among your people would have tried?

A. Joe Russo.

Q. And he is still with your company, isn't he?

A. Right.

Q. Does he work for you?

A. Not today, no. He did then.

Q. He is no longer with your company at all?

A. He is with the company.

Q. Where does he work today?

A. He is the general purchasing agent today.

Q. Where is the Baltimore Spice Company located?

A. In Baltimore, Maryland.

Q. How long has it been located there?

A. I don't know.

Q. Do they process dehydrated onion and garlic?

A. No. They are a distributor, to the best of my knowledge.

Q. They distribute the product?

A. They are the distributors, sales agents, or they buy for their own account. I don't know their source of supply.

Q. You don't know where their onion and garlic comes from?

A. That's correct?

Q. I show you Commission's Exhibit No. 63 again, Mr. Knaub. If I understand your direct testimony cor-
1243 rectly, you did see that letter shortly after it was received by Mr. Ritter, is that correct?

A. Right.

Q. What was your answer?

A. Yes.

Q. On the basis of your experience in purchasing dehydrated onion and garlic over the years, would you say that the Basic Vegetable Products Company has consistently maintained a higher quality product than Gentry has?

A. Yes.

Q. The quality of the Gentry dehydrated onion and garlic has been consistent at least for the past five years, though, hasn't it?

A. Correct.

Q. Did you have anything to do with the purchase of the Brooks Food Division of dehydrated onion and garlic from Basic Vegetable Products Company in 1957 and 1958?

A. Did I?

Q. Yes, sir.

A. No, sir.

Q. Who handled those purchases?

A. Dale Hood was the general purchasing agent when we took over. I assume he was buying onion products in those years. This would be an assumption on my part.

Q. When did you take over this company?

1244 A. April 1, 1959.

Q. Since April 1, 1959, who has been handling the purchases of the Brooks Division?

A. Dale Hood.

Q. Have you exercised any control over him in his purchases?

A. Only to the extent that I suggested we should have a second source of supply.

Q. Did you suggest any particular company as a second source of supply?

A. I did.

Q. What company did you suggest?

A. Basic Vegetable Products.

Q. And why did you select them over Gentry?

A. Because of my past experience and because they were the major supplier in the east.

Q. I didn't hear your answer.

A. Because of my past experience on their quality and the fact that they were a major supplier in the east. We know their quality, service and so forth.

Q. And you feel that the quality of Basic is today better than the quality of the Gentry dehydrated onion and garlic?

A. That's a moot question to say that it's better, but I would say that I feel that it is always uniform. Their service is always good. This is true of Gentry, but we haven't had the same years of service.

1245 Q. When you purchased from the Baltimore Spice Company in 1958, did you run any tests prior to that purchase of dehydrated onion and garlic, to determine whether or not it met your quality standards?

A. Yes.

Q. Did you make any inquiries to determine where that onion came from?

A. Not to the best of my knowledge.

Q. Before this purchase, did you go to them and ask to purchase their product, or did they come to you and ask you to sell you their product?

A. They asked to sell us their product.

Q. Did they ask you personally?

A. Eventually. It started in the lab. As you will recall, I said that they were helpful in formulating—in reformu-

lating some of our products. They in turn were discussing their onion with the lab. It met with their approval, and then they naturally tried to sell us. They tried to sell me.

Q. What was the name of the individual of the Baltimore Spice Company that assisted your lab in making these changes or suggestions?

A. I don't remember his name.

Q. Do you remember the name of anybody with the Baltimore Spice Company that you did business with?

A. No, I don't.

1246 Q. Has anyone from the Baltimore Spice Company ever called on you or your company since 1958?

A. They have called on the company; but they have not called on me.

Q. Who in the company did they call on?

A. Joe Russo.

Q. Do you permit Mr. Russo to buy from any source that he chooses or wants to?

A. Any approved source.

Q. Is the Baltimore Spice Company still an approved source?

A. I believe so; I couldn't answer that specifically, however, because I am no longer responsible for purchasing as such.

Q. Are you responsible for the names of the companies that are approved or not approved?

A. Your question again?

Q. Are you responsible for the companies that are approved as sources of supply or are not approved as sources of supply?

A. I am not responsible, no.

1247 Q. Who is Mr. Russo?

A. Mr. Russo is general purchasing agent, and his top kick is Al Funke, who is the general manager of the division.

Q. Who in this period from 1946 to 1958 was in charge of the sales of the products of the Ritter Company?

A. Robert Lore.

Q. Did Mr. William Ritter do any selling of the products?

A. No.

Q. Did he contact any sellers?

A. Sure, in a social way.

Q. Did Mr. Paul Ritter contact any buyers?

A. You are talking from 1946 to 1958?

Q. Yes.

A. Yes.

Q. Did Mr. William Ritter contact any buyers?

A. I doubt it.

Q. Did he contact them socially?

A. Oh, sure, at cocktail parties.

Q. Did you have anything to do with selling the Ritter products during this period 1946 to 1958?

A. 1946 to 1948, no.

Q. Well, 1946 to 1958.

A. From 1948 to 1957, I handled private label.

Q. Did you attempt to sell private label products to Consolidated Foods?

1248 A. Sure.

Q. Whom did you contact in Consolidated Foods?

A. That was done through our food brokers.

Q. Did you personally contact anyone in Consolidated Foods?

A. No.

Q. Which of your brokers contacted Consolidated Foods for the purpose of selling private label?

A. The brokers in the particular areas. In the case of Baltimore, it would be Harry B. Cook Company. Offhand, I don't even know where all of Consolidated's warehouses are. In Chicago it would be Smith and Settle.

Q. Did your company—that is, the Ritter Company—in each of the years 1948 to 1958, sell private label products to Consolidated Foods?

A. Did we sell during that period?

Q. In each of those years.

A. I couldn't answer whether we sold in each of those years.

Q. Can you answer and tell me which specific years that you know of that you sold private label products to Consolidated Foods?

A. I couldn't remember that.

Q. Do you consider, in attempting to sell your products to any company—do you consider it an advantage or a help if you also make purchases from the company to whom you are attempting to sell your product?

1249 A. I do not. I think each side of the business stands on its own.

Q. Do you consider it a help or an advantage, in attempting to sell your products to a company, to lower the price to that company?

A. Do I consider it an advantage to selling by lowering the price?

Q. Yes.

A. Well, this is always an advantage.

Q. And would you say that it is an advantage because the buyer pays less for the product?

A. I don't follow you. It is an advantage because the buyer pays less for the product?

Q. Yes. Can't you sell if your price is lower than anyone else's?

A. Yes.

Q. During the period from 1949 to 1958, have the prices on dehydrated onion and dehydrated garlic varied?

A. How do you mean did they vary? Did they vary from year to year?

Q. Yes.

A. I am sure that they weren't the same price through all that period of time..

Q. Did you find that at a particular time—for instance, during the year 1952—that the price varied as between
1250 those selling the product?

A. I don't recall.

Q. Before you purchase dehydrated onion and garlic, don't you attempt to determine what the price is that Basic is quoting you?

A. We do.

Q. At the same time, don't you try to determine the price that Gentry is quoting?

A. We do.

Q. Have you done that in the past?

A. Yes, sir.

Q. Have you found variances?

A. No, sir.

Q. They are the same price?

A. From year to year, right.

Mr. Hays: That's all I have, your Honor.

Redirect Examination

By Mr. Walker:

Q. I have a couple of questions which will be very brief. From time to time, Mr. Knaub, during a period when you were in charge of purchasing for the Ritter Company, did you get samples of the dehydrated onion manufactured by Puccinelli and the Simplot Company?

A. Yes.

Q. Except for this one purchase of 1500 pounds of
1251 dehydrated onion from Simplot in 1955, to the best of your recollection have you purchased any dehydrated onion or garlic from Puccinelli or Simplot for the

Ritter Company in the years that you were in charge of purchasing?

A. No.

Q. Why not?

A. Puceinelli's quality was not such that it could be approved. The Simplot quality was approved; as I recall the order was for somewhere in the neighborhood of five or seven thousand pounds and for some reason or other the stock in New York turned out to be 1500 pounds. By the time they could get the balance in, we didn't need it. That did not smack of a very good service and that was the end of that.

Q. Since about 1954 or 1955, Mr. Knaub, in your opinion, has Gentry had as good quality dehydrated onion and garlic as Basic?

A. Generally speaking, yes.

Q. I wanted to clear up one point, when Mr. Hays was asking you questions on cross examination about the buying authority that this Mr. Russo had. He asked you a question, I believe, to which you gave an answer that Mr. Russo could buy from anyone he chose, providing it was from an approved source of supply. Mr. Russo's authority to do this is only during the period since 1958; that is, in the period between 1948 and 1958, you testified that
1252 you were making those decisions, is that correct?

A. Right.

Mr. Walker: I have nothing further.

Recross Examination

By Mr. Hays:

Q. You answered one of Mr. Walker's questions with reference to the quality of Gentry's products since 1954 or 1955 being equal to Basic's quality by the phrase "generally speaking, yes." What do you mean by generally speaking, the quality is equal?

A. I go back to what I said some time ago. We feel that the quality is as good as Basic. However, we haven't had the years of service and experience with Gentry that we had with Basic. Therefore, we favor Basic as our major source of supply.

* * *

1253 I. S. ROSEN was recalled as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

Further Direct Examination

By Mr. Walker:

Q. Mr. Rosen, have you talked to your laboratory personnel since you were last on the witness stand?

A. Yes, I have.

Q. Did you talk to them at your labs at both Baltimore and Terre Haute?

A. Yes.

Q. Whom did you talk to at Baltimore?

A. Horace Green, chief chemist.

Q. And whom did you talk to at Terre Haute?

A. Paul Olson.

Q. In the course of this conversation with Mr.
1254 Green, did you find out, Mr. Rosen, when that Baltimore lab was first established?

A. Yes.

Q. When was it?

A. Approximately 1951.

Q. How long has Mr. Green been chief chemist at the Baltimore lab?

A. Since 1951.

Q. And what was his background prior to that time?

A. Mr. Green was a graduate chemical engineer. He went to work for — I forget the name of the company.

Q. Was it Ivanhoe?

A. Yes, Ivanhoe Food Products Company, in the capacity first as chemist, later as chemist and production manager.

Q. Did the Ivanhoe Company ever dehydrate onion and garlic?

A. Yes; they dehydrated both onion and garlic.

Q. Did you find out from Mr. Green how far back he has, at the Baltimore lab, records of tests made on raw materials?

A. Mr. Green told me that he had records back to 1951.

Q. And how far back does the Terre Haute lab have such records?

A. 1954.

Q. Did you ask Mr. Green and Mr. Olson to make a search of those records to see if they could find any records of tests made on dehydrated onion and garlic products?

1255 A. I did.

Q. Did they report to you that they found any such tests?

A. Mr. Green found one test; Mr. Olson found none.

Mr. Walker: Will you mark this document Respondent's Exhibit 128 for identification, please.

(The document referred to was marked Respondent's Exhibit 128 for identification.)

By Mr. Walker:

Q. Mr. Rosen, I will show you a document which purports to be a lab report entitled "Subject: Evaluation onion and garlic powders," dated May 5, 1952. Would you examine this, please?

Mr. Walker: Your Honor, we have only the one copy. Would you like to look at it before I start asking the witness questions about it (handing to Examiner).

Q. Mr. Rosen, do you ever recall receiving this report

or this document that is marked Respondent's Exhibit 128 for identification?

A. I don't recall it.

Q. This report covers onion powder and garlic powder, I believe, is that correct?

A. That's correct.

Q. What kind of onion was your company using in 1952?

A. Onion chips, onion powder.

Q. Your total purchases of onion in 1952, according to Respondent's Exhibit 125, was 12,100 pounds of de-
1256 hydrated onion. About how much of that, Mr. Rosen, was onion chips and about how much was onion powder?

A. From our general usage, I believe that it would be approximately 10,000 pounds of onion chips and approximately 2,000 pounds of onion powder.

Q. And of the garlic you purchased that year, which I believe was roughly — your purchase of dehydrated garlic in 1952 was 1,620 pounds. What kind of dehydrated garlic was that?

A. Garlic powder.

Q. Over the years since 1952, what, approximately, has been the ratio of onion chips to onion powder that you have used?

A. Approximately six to one; that is, six times as many onion chips to onion powder, one part of onion powder.

Q. I would like to have you assume that you have received this lab test that you have in front of you — that is, Respondent's Exhibit 128 for identification. Upon what basis would your over-all evaluation of the laboratory report you have there — that is, Respondent's Exhibit 128 for identification — be based?

A. I don't understand your question.

Q. Let me put it more simply. How would you evaluate

that laboratory report that you have there in making an assessment of the relative merit of the products?

A. I would say that the products were basically of
1257 the same quality in so far as their usage is concerned in our products.

Q. This report, which is Respondent's Exhibit 128 for identification, contains an evaluation of the following items in relation to onion powder: color, skin, pungency, dry aroma, taste and flavor strength. Are there any of those factors that you would give more weight to than the others?

A. In the particular products in which we use onion powder, I definitely would give the most weight to pungency, aroma, taste and flavor.

Q. The remaining factors listed there, I believe, are color and skin, is that right?

A. That's correct.

Q. Why would you give less weight to those two than to the others?

A. In color, the color is really no factor in our products, as, for instance, a majority of this is used in chili sauce. Chili sauce is a very deep red. A slight difference between a white or a tan-gray in an onion powder would not affect the color of the finished product at all, so that it isn't a factor in so far as we are concerned. The skin, the thickness, is not a factor in a majority of instances because the product is processed and as long as it is not a real tough one which would be chewy, why, it isn't important.

Q. I would like to read you two questions and answers that I asked and you gave in yesterday's testimony.
1258 I should correct that to say one question and one answer which occurred in the course of my examination and one question and one answer that occurred in the course of Mr. Hays' examination. I asked you this: "Q. Have you ever felt, personally, that Basic has a better quality onion or garlic at the same price as Gentry?

"A. No." This is a question by Mr. Hays: "Q. What was the basis of your determination, lab tests or some other basis?

"A. Lab tests, performance tests, whatever they were as reported to me."

If I asked you now the same question that I asked you yesterday—that is, have you ever felt, personally, that Basic has a better quality onion or garlic at the same price as Gentry, what would your answer be?

A. No.

Q. Please explain why, Mr. Rosen, in view of the laboratory report that you now have in front of you, Respondent's Exhibit 128 for identification, your answer to that question is the same today as it was yesterday?

A. Well, in evaluating this test on the onion powder, I still feel that the Gentry and the Basic product were of comparable quality in the light of our requirements. However, quality is not the whole story. There are a number of other factors involved, as, for instance, service—

1259 Q. Excuse me, but I do want to interrupt you, because the question you are answering now relates solely to the question of quality.

A. Well, and in addition to this we have used and had been using the Gentry products over a great many years. We have always found them satisfactory in our production, and that is the basis of my opinion.

Q. Where would the laboratory have obtained the sample of Gentry's onion and garlic powder that was used in that report?

A. They would have obtained that from our regular shipments that were used in production.

Q. And where would the laboratory have obtained the sample of the Basic dehydrated onion powder and garlic powder that was used in the performance of that test?

A. Since we weren't purchasing from Basic, this was a sample that was submitted by Basic, and I also take this

into consideration: it has been my experience that when samples are submitted, they are normally the best of any lot that they might be able to obtain. We make it a policy, if there is any idea of purchasing, that we maintain a portion of the sample for comparison purposes, because we have frequently found that samples submitted do not come up to the regular production.

Q. Did you ask Mr. Green what his current opinion was on the relative qualities of Basic and Gentry's dehydrated onion?

A. I did.

1260 Q. What was his answer?

Mr. Hays: Objection.

Hearing Examiner Kolb: Sustained. This is hearsay.

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1261 By Mr. Walker:

Q. Did Mr. Green report to you that he had tested Gentry's and Basic's quality from time to time in past years?

1262 A. Yes.

Q. Do you now remember ever receiving any reports from Mr. Green on the subject specifically of the quality of Gentry's products and Basic's products?

• • •

A. I remember, not at any specific time, but I do remember reports from Mr. Green in which he had stated that Basic products and Gentry products were of comparable quality.

Q. In the conduct of your business, Mr. Rosen, is it the practice to receive reports from time to time from Mr. Green on the quality of your raw materials?

A. That's correct.

Q. What tests have the Baltimore and Terre Haute laboratories made from time to time on Gentry's dehydrated onion and garlic powder?

A. The Baltimore and Terre Haute laboratories sample every individual shipment that comes in of Gentry products, onion chips, onion powder and garlic. They rehydrate these products and evaluate them from the viewpoint of whether they are good or bad. As long as they are good, I don't hear about it. If there was ever a bad lot that came in, I would hear about it. I don't remember ever having received a report that any of the Gentry onion chips or onion powder was ever bad, or also garlic powder.

1263

Q. Do you ever recall asking your laboratories, either of them, to make tests of Basic's dehydrated onion or garlic?

A. No.

Q. Why didn't you ask your laboratories to make tests of Basic's products, to be sure that you were getting the best quality possible?

A. For whatever reasons there were, in my mind I felt that the Gentry products were as good as could be purchased on the market. And in line with my general policy, I concentrated my purchases with Gentry and placed the burden on Gentry to service me with the best quality onion and garlic products on the market at the proper price, as well as service, filling my account with the merchandise when it was required. I also, of course, had a long and pleasant relationship with Joe Farrell and the company in general and I found no necessity for shopping.

Q. To the best of your recollection, Mr. Rosen, did any Basic representatives ever try to convince you otherwise?

A. I believe that I had seen a Basic representative once or twice and they surely tried to convince me otherwise.

Mr. Walker: Your witness, Mr. Hays.

Further Cross Examination

By Mr. Hays:

1264

Q. I take it that Respondent's Exhibit No. 128 for

identification is the net result of the lab tests that I requested of you yesterday?

A. That's correct.

Q. In other words, this is it?

A. That's all I have.

Q. I invite your attention to Respondent's Exhibit 125, Mr. Rosen, and for the year 1952 it appears that you have "no data" in so far as purchases from Basic are concerned.

A. That's right.

Q. As I understand it, the phrase "no data" does not mean that you did not purchase any from Basic; it means that you had no records of any purchases.

A. That's correct.

Q. Therefore, on that basis, isn't it improper to assume that the Basic material was something that was carried around by the salesman specifically for the purpose of your test?

A. I do not believe that we were purchasing from Basic at that time. I have no records, but I don't believe that we were purchasing from Basic at that time.

Q. So that you are assuming that the material tested was something a salesman brought around specifically for that purpose, is that right?

A. That's correct.

1265 Mr. Hays: Mr. Walker, did you plan to offer Respondent's Exhibit No. 128 for identification? If not, I would like to have it marked and offered later as part of my case.

Mr. Walker: It has already been marked as a Respondent's exhibit for identification. I do not plan to offer it in evidence. I have no objection if you wish to do so.

* * *

1266 (Whereupon, the document referred to, heretofore marked Commission's Exhibit No. 225 for identification, was received in evidence.)

By Mr. Hays:

Q. With reference to the Gentry material that was the basis for this laboratory test, the results of which are reflected in Commission's Exhibit 225, where did that material come from?

A. It is my belief that this came from our regular stock.

Q. Do you know that?

A. I don't know it positively, but we were using the material at that time and I would see no reason to take a sample when we had the material in stock and would want to make comparisons, if such comparisons were to be made, against production samples that we were using.

1267 Q. Isn't it logical to make comparisons before a new carload is purchased?

A. We don't receive advance samples of shipments from Gentry.

Q. The Gentry salesman did continue to call on you in 1952, did he not?

A. He called on us; but it was not necessary for him to submit samples of material that was in our possession.

Q. But when the Gentry salesman called upon you at that time he had samples with him, didn't he?

A. I am not sure of that.

Q. In other words, you are assuming that the Basic material used in this test was a specific best-of-lot type of sample, and you are assuming that the Gentry material used in this test was just that which came out of the regular amount of product that you had on hand?

A. That's correct.

Q. At the present time, do you still sell your products to Consolidated Foods?

A. I do.

Q. Did you sell them any this year?

A. Yes.

Q. Did you sell any to them in 1959?

A. Yes.

• • •

1268 Q. How much have you sold of your products to Consolidated Foods or its affiliated corporations this year so far?

A. I don't know.

Q. How much did you sell in 1959?

A. I believe I have some records here as to that. No, I don't know.

Q. Can you give us an approximate figure, Mr. Rosen?

A. No, I can't.

Q. Have you contracted, entered into any contracts for the packaging of private label products for Consolidated Foods to be delivered during 1960?

A. No.

Q. And you don't have any idea what you sold Consolidated Foods so far this year?

A. No.

Q. You couldn't state whether it was over $10,000 worth or under $10,000 worth?

A. I would believe that it was over $10,000 worth.

1269 Q. Do you have any idea how much over? Was it over $25,000 worth?

A. I would guess that it was over 25. I don't know, but I am just guessing.

Q. Well, is it running about the same that it was last year, Mr. Rosen?

A. I don't know.

Q. How much did you sell to Consolidated in 1958?

A. Approximately $200,000 worth.

Q. And did you sell more or less to them in 1959 than in 1958?

A. I am not in the sales department. I am in the production. I don't follow the sales records. It just seems to me that I was told, when these figures were gathered for

me, that our sales were less in 1959 than they were in 1958, were less to Consolidated. I just want to qualify this: that this is something that I seem to remember, but I don't know it for certain.

Q. Do you still regard Consolidated Foods as a desirable customer or prospective customer?

A. I do.

Q. Correct me if I am wrong, but I believe you said that they were an important customer in 1958. Am I right in that?

A. That's correct.

* * *

1270 ALBERT E. KEOGLER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Albert E. Keogler.

Q. Where do you live?

A. 11 Southland Drive, Glen Cove, New York.

Q. What is your occupation?

A. I am vice president and sales manager of Albert Ehlers, Inc.

Q. Where is that company located?

A. Brooklyn, New York.

Q. What is the street address?

A. 1300 Flushing Avenue, Brooklyn 37, New York.

Q. In what business is the company engaged?

A. We manufacture and distribute coffee, tea, spices, extracts.

1271 Q. What are your duties with the company at the present time?

A. I am presently in charge of sales and sales policies.

I also direct the purchasing of our spice and extract department, spice and extract purchasing department.

Q. What responsibilities, other than the one you have just mentioned, have you had in regard to purchasing since 1950?

A. From 1950 until 1957 I did all the purchasing of spices and extract, at which time a new man was broken in for that job and I have supervised his operation since that time.

Q. To whom do you sell your products?

A. We sell our products to retail accounts, wholesale accounts, chain accounts, institutional accounts.

Q. How do you market your product?

A. We have our own force, sales force. We also sell to jobbers. We also sell through brokers to jobbers and chains.

Q. And under what labels do you sell your products?

A. We sell under the Ehlers Grade A label.

Q. Do you also do any private label packing?

A. Yes.

Q. What products has your company sold to Consolidated Foods Corporation or any of its units?

A. We have sold to Monarch, I believe it is, in Baltimore, a quantity of our coffee.

Q. Do you know during what years those sales were made?

A. These sales were made in approximately 1956, 1272 1957, in general, in that general area.

Q. Can you make any estimate as to the volume of those sales?

A. Very small.

Q. To the best of your knowledge, has your company made any sales to any Consolidated units other than the Monarch unit you have just mentioned?

A. To the best of my knowledge, we have not.

Q. In which of your products do you use dehydrated onion and garlic?

A. We use dehydrated onion and garlic in onion powder, garlic powder, onion salt, garlic salt, minced onion, minced garlic, chopped onion. We also blend onion and garlic powder and granulated onion and garlic with other spices to make other formulas, barbecue spice and things of that nature.

Q. You mentioned a chopped onion product. Is that the same as your sauteed onion?

A. No, that is an additional product that we pack.

Q. What other types of onion have you used other than the dehydrated onion?

A. We have distributed an onion extract which is packed for us by Fred Fear and Company. It is a liquid onion, as we call it.

Q. In which of your products do you use capsicums?

A. We package capsicums, as such. We blend them 1273 with other spices and seasonings to form blends.

Q. During what period of time have you personally supervised the purchasing of dehydrated onion, garlic and capsicums?

A. With the exception of the Korean War, for a 13-month period, I personally supervised it since 1950.

Q. Approximately when were you absent during the Korean War?

A. I think it started in 1950, did it not? From October 1950 until the beginning of December, December 1st, roughly, in 1951.

Q. From what companies have you purchased your dehydrated onion and garlic?

A. From Gentry, from Basic, from Frank Tea and Spice Company in Cincinnati, from Gilroy.

Q. Is that Gilroy Foods?

A. Yes.

Mr. Walker: This is Respondent's Exhibit No. 129 for identification.

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1275 (The document referred to, heretofore marked Respondent's Exhibit No. 129 for identification, was received in evidence.)

Q. Based on your own recollection, did your company buy any dehydrated onion or garlic from Basic prior to 1955?

A. It is conceivable that we did, but I couldn't say definitely that we did.

Q. You mentioned that you purchased dehydrated onion and garlic from Gilroy Foods, Inc. and the Frank Tea & Spice Company. When was the purchase made from the Frank Tea & Spice Company?

A. We have been purchasing from Frank Tea & Spice from 1950 on, possibly slightly before.

Q. And when was the purchase made from Gilroy Foods, Inc.?

A. Just this year.

Q. In what form is the dehydrated onion and garlic packaged that you buy from the Frank Tea & Spice Company?

A. They pack for us in small glass jars, a mold
1276 which they own, a 3/8 ounce and a 1/4 ounce garlic and onion. We also purchase onion flakes from them in small consumer tins.

Q. Under whose label are these products packed?

A. Ehler's Grade A.

Q. In other words, the Frank Tea & Spice Company is doing packing of these products for you under your label?

A. That's right.

Q. When, to the best of your recollection, did your company first start purchasing from Basic onion and garlic?

A. I would assume that we began purchasing in 1954.

Q. Is that your best recollection?

A. That is my best recollection, yes.

Q. Why did you start purchasing from Basic at that time?

A. Well, the Basic salesman has been calling on us for quite a period of time. He continually came in with good ideas that helped us in producing for Mrs. Consumer a better product. We had difficulty with caking, solidifying of the onion and garlic products in the jar. They helped us, through their lab, in solving this problem and suggested to us how to rectify this difficulty.

Q. Have you worked with Basic on the development of any new products?

A. Yes, we did. In 1956, the latter part of 1956 and mainly in 1957, we worked on the development of a product called minced onion. Between Bob Sparling and my-
1277 self we conceived this product and Basic was instrumental in helping us develop it and they even worked with us on the advertising and some of the sales promotion when it was introduced.

Q. What do you mean when you say they worked with you on the advertising and promotion?

A. Both in suggesting ways that it could be best introduced and financing some trade journal advertising, in helping us bear the cost of the newspaper advertising that we did to introduce the product.

Q. Who were the ultimate consumers or customers for this instant-mixed onion product?

A. The particular package I am talking of now was particularly a consumer product. Mrs. Housewife uses it.

Q. How has the product turned out. Has it been successful?

A. Exceptionally successful.

Q. What, in your opinion, are the reasons for its success?

A. Because it is a convenience food and it eliminates one of the messiest food preparation problems that Mrs. Housewife is facing.

Q. Why have you continued to buy dehydrated onion and garlic from Gentry over the years, Mr. Keogler?

A. Gentry, too, has helped us solve problems and introduce new products.

Q. Have you worked with any particular Gentry salesman?

A. Yes, in particular Oscar Schek, although I 1278 have worked also with Mr. Farrell.

Q. And what is your opinion of the service offered by the Gentry sales representative?

A. Oscar Schek is probably one of the most capable and helpful salesmen I have ever met.

Q. Has that played any part in your placement of business with Gentry?

A. Yes, Oscar has been exceptionally cooperative. He has interceded for us with his company in having lab work done. When we ran into problems with certain products, he would go to them, present the problem, have it taken care of, come back with solutions. He has helped us in thinking along the lines that resulted in new products, a saute onion for one, which we worked out with Oscar Schek and marketed that product. We have since marketed minced garlic and a garlic pepper which we have collaborated on.

Q. Where do you buy the onion and garlic for your saute onion, minced garlic and garlic pepper?

A. The saute onion and minced garlic we buy from Gentry.

Q. Where do you buy the onion for your instant-mixed onion?

A. From Basic.

Q. And are most of your purchases from Basic the onion

that you use in that product?

A. Yes, sir.

Q. Why have you begun to purchase dehydrated
1279 onion and garlic from Gilroy Foods, Inc.?

A. Gilroy is a new company, and their representative is a very personable lad. He had a good opening promotion, and we saw fit to avail ourselves of this opportunity.

Q. From whom have you purchased your capsicums over the years?

A. Mainly, these were imported.

Q. Have you also purchased some of those from Gentry?

A. We have purchased paprika from Gentry upon occasion. We also purchased chili powder from Gentry.

Q. Why have you purchased chili powder from Gentry?

A. Gentry is our sole source of chili powder. The reason they are our sole source is because they produce what we think is a very satisfactory product, and by using theirs continually we have uniformity, which Mrs. Housewife looks for.

Q. When [illegible] you purchased the domestic paprika from Gentry?

A. I believe it was in 1957; I am not a hundred percent certain. We had a very expensive paprika from Spain and we purchased domestic paprika to blend with our imported product in order to reduce the price.

Q. Mr. Keogler, I have explained to the Hearing Examiner that you have talked with Mr. Rothe and myself about this case. Before that time, had you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of
1280 dehydrated onion, dehydrated garlic or capsicums?

A. No.

Q. Did you have any kind of a communication on this subject?

A. None.

Q. Mr. Keogler, what effect has the fact that Consolidated is an actual and potential customer of Ehler's had on your purchasing of dehydrated onion, dehydrated garlic and capsicums?

A. None.

Q. Would you please describe the kinds of calls that are made on you by the Gentry and Basic salesmen? That is, what do they do?

A. I will explain the nature of both salesmen's calls at the same time, because the nature of their calls is pretty much the same. As I have stated, they come in mainly to help us with product development, to suggest to us new products or new methods that their companies have developed and which will give us a better product to introduce to the consumer, or to sell to the consumer. They will help us combine purchases so as to get the maximum in freight saving. As I said, they help us with new products. In general, they are both invaluable as far as our purchasing department is concerned in aiding and assisting our purchases of these products.

Mr. Walker: Your witness.

1281 *Cross Examination*

By Mr. Hays:

Q. Is it your testimony that in 1958, you sold approximately 45,000 pounds of this new type onion product?

A. Yes, sir.

Q. And is it your testimony that in 1957, you sold about 50,000 pounds of this new onion product?

A. That's right.

Q. In other words, you sold less in 1958 than in 1957, is that right?

A. That is conceivable.

Q. It is not only conceivable, but it is true, if your testimony is true, is that right?

A. Yes, sir.

Mr. Walker: Please let the witness finish his answer to the question.

The Witness: May I go on?

Hearing Examiner Kolb: Yes.

A. The reason that is is because, when we introduced a product, early in 1957, you immediately have a vast area of vacuum, a vast vacuum that has to be filled. The pipelines are completely empty. The filling of those pipelines uses a considerable quantity of this product. In 1958, all we were doing was restocking.

Q. In 1956, how much of this new onion product did you sell?

1282 A. The product was introduced in 1957.

Q. What did you do with this dehydrated onion that you bought from Basic in 1956?

A. We have purchased from Basic, as well as from Gentry, onion powder and granulated onion, in addition to the items I have mentioned. One area—I discussed saute onion, minced onion and others, but we have not discussed chopped onion and ground onion. As I said early in the testimony, Basic helped me with a caking problem. This was on an onion powder product. This is what we started purchasing from them. It was the onion powder.

Q. And that would be in 1955?

A. Yes, 1955.

Q. In other words, those purchases in 1955 did not go to this new product?

A. No, sir.

Q. In other words, you used the material that you purchased from Basic in 1955 for the same purposes that you used the dehydrated onion that you purchased from Gentry?

A. That's right.

Q. Is the same thing true for the year 1956?

A. I would say in part, yes.

Q. Did you do any purchasing for Albert Ehlers in 1950?

A. In 1950, from January through October, I did the purchasing for Albert Ehlers.

1283 Q. Whom did you purchase your dehydrated onion and garlic from in that year?

A. I believe we purchased solely from Gentry and Frank Tea & Spice.

Q. In other words, how much dehydrated onion did you use in 1950?

A. I haven't the faintest idea, sir.

Q. Was it approximately the same amount you used in 1951?

A. Can I answer that question by giving you an explanation of our operation?

Q. Yes.

A. We have only become active in the spice business since after the Korean War. Our volume each year has increased tremendously. As these figures show, our growth has been in the last few years mainly, so that our purchases from 1946 through, say, 1951 and 1952, with a small company purchasing its requirements and then growth starting from there on out.

Q. How long have you sold products to Consolidated Foods?

A. We only sold, to the best of my knowledge, to one division of Consolidated Foods, and that is Monarch in Baltimore. We sold them through a food broker, Alto Brokerage. We had distribution in the Baltimore area through our own sales department. We did not sell wholesalers at that time. When we hired this brokerage concern, he was able to secure distribution for us through the whole-
1284 sale houses in the Baltimore area and I think also in the Washington area. We sold them very small quanties at most on three occasions. We were unsuccessful in

maintaining our position in the market completely.

Q. And when did you sell these products?

A. This would be around 1956 or 1957, I would say.

Q. At the present time, do you sell wholesalers?

A. Yes, we do.

Q. At the present time, do you regard Consolidated Foods as a prospective customer?

A. No.

Q. Why not?

A. Because we don't intend to distribute in the areas where I am aware that they have wholesale outlets.

Q. You are not going to distribute in Baltimore?

A. No, sir, we are not.

Q. Where do you distribute?

A. Our main area of distribution is metropolitan New York, New Jersey, a small bit of distribution in Philadelphia, the Hudson Valley, the northeastern portion of the State of New York, the northwestern portion of the State of New Hampshire, the southern portion of the State of Massachusetts, excluding Boston, the entire State of Connecticut, and Providence, Rhode Island, and the westerly part of Rhode Island.

1285 Q. When did you and Mr. Sparling work out this new product?

A. Bob and I worked the product out, I believe, in 1956.

Q. Where was this done, at your office?

A. Yes, Bob was sitting at my desk the day that we had the idea of packaging it in a glass jar. Subsequent to that time, we have also produced a product in a foil package, and here Bob Sparling and his man, Gallo, who is his New York Representative, have helped us immensely in developing a foil package, in having it packed for us on the west coast. They have done all the groundwork with the company that was doing the packing. They have helped us with label design and done quite a bit to help us.

Mr. Hays: That is all I have.

* * *

1286 JOHN S. ROSS, called as a witness on behalf of the respondent and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. John S. Ross.

Q. Where do you live?

A. In West Chester, Pennsylvania.

Q. What is your occupation, sir?

A. I am the president of Grocery Store Products Company.

Q. Where is that company located?

A. Located in West Chester, Pennsylvania.

Q. How long have you been president of the company?

A. Since 1945.

Q. Please describe the business in which the company is engaged?

A. We manufacture Kitchen Bouquet, Cream of Rice,
1287 and we grow and can mushrooms at West Chester. We have a macaroni factory where we manufacture macaroni products at Libertyville, Illinois and another macaroni plant in Los Angeles, California, where we also make macaroni and noodle products.

Q. What is the brand of your canned mushroom products?

A. B in B.

Q. I don't recall whether you covered this or not. Did you tell us where Kitchen Bouquet, Cream of Rice and B in B mushroom products are processed?

A. Yes, in West Chester, Pennsylvania.

Q. To whom does your company sell it products?

A. We sell to recognized wholesale buyers; that would be wholesale groceries and chain stores.

Q. Through what channels do you market your products, Mr. Ross?

A. Through brokers.

Q. And under what labels do you sell your products?

A. Well, the mushrooms are the B in B brand.

Q. We have already covered the names. I will withdraw the question, please. Do you sell your products all under your own labels?

A. All of them except macaroni. We pack macaroni under our label and we manufacture and assemble for Kraft all of the Kraft macaroni, spaghetti and noodle dinners used west of Pittsburgh.

Q. In which sections of the country are your prod-
1288 ucts sold, Mr. Ross?

A. The ones manufactured and processed at West Chester are sold nationally, not including the west. The macaroni out of Libertyville is sold in five central states. The macaroni manufactured in Los Angeles is sold in southern California and Arizona.

Q. To what extent are the products that are made at West Chester advertised, Mr. Ross?

A. They are nationally advertised in magazines and Sunday newspaper supplements and on TV.

Q. To what extent, in your opinion, is there consumer demand for these products?

A. I would say that Kitchen Bouquet has near a hundred percent distribution in all chain stores and supermarkets and most of the good retail stores in the entire United States.

Q. And is that caused, in your opinion, by consumer demand?

A. Yes. B in B mushrooms is about the same, and Cream of Rice, also.

Q. How, in your opinion, has that consumer demand been created, Mr. Ross?

A. Through advertising and selling activities and merchandising activities.

Q. In which of your products have you used onion or garlic or capsicums?

1289 A. I didn't mention that we have a new product, B in B mushroom—beef-flavored mushroom gravy, in which we use a tiny bit of garlic, but Kitchen Bouquet is a product in which we use a lot of onions.

Q. What about the capsicums, Mr. Ross?

A. We don't use them.

Q. If I understand your testimony correctly, the only garlic you use is in the mushroom gravy and you use no capsicums, is that right?

A. That's right.

Q. When did you start making this mushroom gravy?

A. About three years ago.

Q. During what period of time has your company sold any products to any of the units of Consolidated Foods Corporation?

A. Ever since their formation, and to the individual units prior to that.

Q. What products have you sold to Consolidated?

A. We have sold all of our products, with the exception of Gold Medal macaroni manufactured at Los Angeles.

Q. About how large have been your sales to Consolidated since about 1948, Mr. Ross?

A. They have run from $50,000 to $100,000 a year.

Q. And approximately what percentage of your company's total sales have these sales to Consolidated been?

A. Less than one percent.

1290 Q. What has been the trend of your sales to Consolidated since 1950?

A. Our sales with Consolidated have grown steadily.

Q. What, in your opinion, has been the reason for this trend?

A. We have practically doubled our business since 1950. Consolidated has grown and it has been a natural, healthy growth which is normally expected.

Q. Where do you buy such dehydrated garlic as you have used?

A. We pick it up locally somewhere. It is such a small quantity, we haven't gone out to buy it.

Q. From what companies have you purchased your dehydrated onion requirements?

A. Our primary supplier is Basic.

Q. Have you also purchased from Gentry?

A. Yes, we have made two purchases, I believe, from Gentry.

Q. What part does your laboratory play in the choice of the sources of supply for your ingredients?

A. The lab's first job is quality control, which means that they have to test all the shipments that come in and prove them before they go into the products. Secondly, they experiment on products that might save us money because of price, or improve the quality, or in some way benefit the company. That is the primary purpose of our lab.

1291 Q. Does your lab play any part in testing new ingredients in connection with products that you are working on?

A. That's right. If we were to make a change in our source of supply on an ingredient which we are currently using, they would test it, just as they would test a shipment from our old supplier as it comes in.

Q. Over the years, have the salesmen who sell the dehydrated onion and garlic worked with your lab?

A. Yes.

* * *

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 130 for identification, was

received in evidence.)

1292 By Mr. Walker:

Q. Directing your attention to Respondent's Exhibit 130, this shows that your only purchases from Gentry of dehydrated onion were in 1954 and 1955. Other than the purchases from Gentry in those two years, from what company have you bought your dehydrated onion?

A. From Basic.

Q. Do you have records that would show the quantities of your purchases of dehydrated onion from Basic?

A. No, not for those years.

Q. About how much dehydrated onion did you use in 1958, Mr. Ross?

A. Between 55 and 60 thousand pounds.

Q. And about how much dehydrated onion did you use in 1950?

A. I have to guess on that. I would say probably less than 40.

Q. Less than 40,000 pounds, you mean?

A. Yes.

Q. What duties have you performed since 1950, Mr. Ross, in connection with the purchasing of dehydrated onion?

A. I don't do any of the purchasing. I only set the policies. My purchasing agents do the purchasing.

Q. You set the policies in regard to purchasing, is that right?

A. That's right.

1293 Q. Who are the men that have carried out these policies and done the actual purchasing?

A. Mr. J. F. Gilmour and Mr. F. A. Brandow.

Q. During what period of time did Mr. Brandow do the placing of orders?

A. I am not certain, but it was prior to 1953 or 1952.

Q. After that time, who did the placing of the purchasing orders?

A. Mr. Gilmour.

Q. Is Mr. Gilmour still with the company?

A. Mr. Gilmour died on February 2nd of this year.

Q. Mr. Ross, this is Commission's Exhibit 42, which purports to be a copy of a letter from Mr. G. K. Wetzell of Consolidated to you, dated January 11, 1952. Would you read this letter, please? Do you recall receiving this letter?

A. Yes.

Q. How did you happen to know Mr. Wetzell?

A. Well, Mr. Wetzell was with National Tea, and then he went with one of the large co-ops in Chicago and then later with one of the companies. I believe it was Reid Murdoch that was taken over by Consolidated. I knew him all those years, since back in 1929.

Q. In this exhibit, that is, Commission's Exhibit No. 42, Mr. Wetzell states that Gentry is a division of Consolidated and then goes on to say as follows: "They are very
1294 nice folks and have good products and asked if I would please bring it to your attention so that they might get a hearing on the possibility of your using some of their products."

What effect did that statement, and Mr. Wetzell's letter in general, have on your company's purchases of dehydrated onion?

A. It had no effect.

Q. According to Respondent's Exhibit 130, you purchased nothing from Gentry in 1952 and 1953, is that right?

A. That's correct.

Q. Respondent's Exhibit 130 shows that you did purchase 100 pounds of dehydrated onion from Gentry in 1954. Why was that purchase made?

A. One of their salesmen prevailed upon our buyers to have tested mushroom chips in place of the sliced mushrooms.

Q. To have tested what?

A. Mushroom chips.

Q. The onion chips?

A. The onion chips, pardon me, in place of the sliced onion. They ordered a hundred pounds in to make a test run.

Q. Was any advantage suggested for replacing the sliced onion with the onion chips?

A. There was to be a saving of around five cents, I believe. I am not sure. There was a definite saving.

Q. In what product were the onion chips to be used?

1295 A. Kitchen Bouquet.

Q. The five-cent figure you gave, was that a per-pound figure?

A. Yes.

Q. What kind of tests were made on these onion chips, Mr. Ross?

A. They made a regular run of Kitchen Bouquet using these chips.

Q. What was the result?

A. They proved very satisfactory.

1296 Q. Did you decide to convert from the sliced onion to the onion chips in your Kitchen Bouquet product?

A. Yes.

Q. Did you have any discussion with anyone about where to buy the onion chips for the Kitchen Bouquet once the test had proved satisfactory?

A. I mentioned to Mr. Gilmour that I thought Gentry should be given consideration because they brought the matter to our attention.

Q. As a matter of fact, with whom did your company contract for the first large order of onion chips for your Kitchen Bouquet product after the time of this test?

A. The order went to Basic.

Q. Why?

A. I don't know. As I mentioned before, I don't do the

buying, but I have only to assume and from the method our buyers use, if both products were satisfactory, it must have been a lower price.

Q. Respondent's Exhibit 130, Mr. Ross, shows that your company did buy approximately 10,000 pounds of dehydrated onion from Gentry in 1955. Why was that purchase made?

A. I had brought it to Gilmour's attention again and said that I felt, since we were saving five cents a pound on onions because Gentry had brought to our attention the fact that we could use the chips instead of the sliced
1297 onions, that they were certainly deserving of an order of appreciation at least. They were given one order of 10,000 pounds.

Q. So they were given one order of 10,000 pounds, you say?

A. That's right.

Q. To your knowledge, was there any other reason for that purchase of 10,000 pounds from Gentry in 1955?

A. Absolutely none.

Q. Mr. Ross, these are Commission's Exhibits 49, 54, 55 and 58 which have been handed to you. This is correspondence between Mr. Perlitz of Consolidated and Mr. LaMarche of your company in March, April and May of 1955. Would you look through these documents, please, and familiarize yourself with the contents of these letters?

A. I have.

Q. Referring to Commission's Exhibits 49, 54, 55 and 58, did you see these letters or other copies of them or the originals, at or about the time they were written?

A. I saw most of them, I believe.

Q. To your knowledge, Mr. Ross, did Mr. LaMarche confer with Mr. Perlitz?

A. On one of his regular trips to Chicago, he went in in and saw Mr. Perlitz, yes.

Q. And that was at about the time of this correspondence here?

A. Yes, it was somewhere along there.

1298 Q. Did Mr. LaMarche report to you about his conversation with Mr. Perlitz?

A. Yes, he did.

Q. What did he say on that occasion to you?

A. He said he had called Mr. Perlitz and he had a very pleasant conversation during which Mr. Perlitz mentioned the fact that they now owned Basic and he would appreciate—I mean Gentry, and he would be very pleased if we could see our way clear to give them some business.

Q. Did Mr. LaMarche tell you what he said to Mr. Perlitz?

A. Yes. He explained to Mr. Perlitz that he was in the sales department strictly, but that he would be very pleased to take it up with the production department on his return to West Chester.

Q. Did you have any other conversations with Mr. LaMarche about any discussion that Mr. LaMarche had with Mr. Perlitz?

A. None. Mr. Gilmour was present when we had this discussion, the purchasing agent.

Q. To your own knowledge, Mr. Ross, what effect did LaMarche's report to you on his conversation with Mr. Perlitz have on the decision to purchase this 10,000 pounds of onion in 1955?

A. None whatsoever.

Q. What effect did the fact that your company sold its products to Consolidated Foods Corporation have on

1299 the decision to purchase the 10,000 pounds of onion from Gentry in 1955?

A. It had no effect.

Q. Mr. Ross, you have been handed Commission's Exhibit No. 60, which is a copy of a letter from Mr. Farrell of Gentry to Mr. Perlitz of Consolidated, dated June 30,

1955. This letter states as follows: "I take pleasure in letting you know that because of your efforts, we were instrumental in being able to sell the Grocery Store Products Company in West Chester, Pennsylvania about 10,000 pounds of our white onion chips."

Is that statement true, Mr. Ross?

A. No, it is not.

Q. Why did you continue to use Basic as your exclusive source of supply for dehydrated onion after 1955?

A. When we first started to use dehydrated onion, we were pretty hard put to find a source because it was during the last year of the war. It was awfully hard to get. Our west coast broker was very close to the Humes and he prevailed upon them to take care of us, and they handled our entire needs, and we, as a consequence, felt a deep loyalty towards Basic.

Q. Has that been the reason for your purchases from Basic over the years since that time, Mr. Ross?

A. Yes. It has been our policy—it is one of the policies I have laid down; that we should stay with the sources of supply that took care of us when things were tough as long as the price, the service and the quality are satisfactory and on a par with competitors.

1300

Q. Well, what is your feeling about the desirability of having two sources of supply as opposed to having one source of supply for your raw materials?

A. We have two sources of supply on any item that runs in sufficient volume to make the account valuable to the supplier. In the case of dehydrated onions, where we use less than two carloads a year, we don't feel that it should be divided between two sources, particularly when they are being shipped from the west coast and the freight is very high in small quantities.

Q. Have you ever discussed your company's purchases of dehydrated onion with a Mr. Bohnlofink of Consolidated?

A. To my knowledge, I never heard of him. I can't remember ever hearing of him.

Q. You have described a communication that you had with Mr. Wetzell of Consolidated about your purchases of dehydrated onion, and you have described conversations in connection with that and with subsequent correspondence between Mr. LaMarche and Mr. Perlitz. Other than that, and prior to the time that you were contacted to testify in this proceeding, have you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion?

A. Not that I can remember; I don't believe I ever have.

1301 Q. Has Consolidated ever been mentioned to you by any Gentry salesman, Mr. Ross?

A. Yes, it has.

Q. Would you describe the manner in which it was mentioned?

A. Well, as I mentioned before, I don't do any of the buying. I simply set the policy. Occasionally, one of Gentry's salesmen would drop in my office just to make a courtesy call and mention that he had seen Wetzell or somebody else I knew in Consolidated and just in passing bring up the subject just as a general reminder that Consolidated was connected with Gentry, probably, but never any pressure was put on.

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Cross Examination

By Mr. Hays:

Q. In 1954 and 1955, Mr. Ross, was it normal procedure for salesmen to call upon you personally?

A. In some cases, yes, depending on whether they had some mutual acquaintance or something. They would stop in and pass the time of day if I wasn't too busy. It happens all the time in our business.

1302 Q. Did you have some acquaintanceship with the Gentry salesmen at that time that would entitle them to call upon you personally?

A. No, but there were other people in Consolidated who would come in and give their regards or something.

Q. This 1955 order—was that about half of your needs for that year?

A. No. I would say it was about a quarter of the needs.

Q. Normally, the salesmen would call upon Mr. Gilmour, wouldn't they?

A. That's right.

Q. And in 1954 and 1955, the Consolidated Foods salesmen, or the Gentry salesmen, I should say, did call upon Mr. Gilmour without you being present, is that right?

A. That's right.

Q. Did you have a great deal of confidence in Mr. Gilmour?

A. Yes, we did.

Q. Did you have confidence in his integrity?

A. Definitely.

Q. In 1955, were you packing any private label products?

A. None except the Kraft Dinners at the macaroni plant, which was more of a custom packing job.

Q. In 1954, were you packing any private label products?

A. No, other than Kraft.

Q. In 1956, were you packing any private label products?

1303 A. It was the same situation.

Q. This Kitchen Bouquet that you referred to, is that in one product or a group of products?

A. That is one product which has been on the market over 90 years.

Q. For the record, will you just describe it, please?

A. It is a coloring and flavoring product for soups and gravies and is also used for basting meat, for roasts and barbecuing. It is made up of 13 vegetables and spices and caramelized sugar for coloring. The formula is a secret formula and the ingredients are on the label.

Q. Was this product advertised nationally?

A. It has been advertised nationally since back in about 1905 or 1906, I guess. I know from personal contact that it has been advertised since 1922.

Q. What is the closest competitive product to this Kitchen Bouquet?

A. Gravy Master.

Q. Is that a nationally advertised product?

A. That is nationally advertised, but it is not nationally distributed. It is sold primarily in the east and in Southern California, Chicago.

Q. It does not have the same distribution that your product has?

A. Not by any manner or means.

1304 Q. Are there any other closely competitive products?

A. Not closely competitive, no.

Q. Are there any other products that are similarly constituted?

A. There are local products, many of which I might not even know about. We run across them now and then, but only in local markets.

Q. But they don't have the national distribution nor the national advertising that your product has?

A. No.

Q. Would you pack your product under private label?

A. No.

Q. Why not?

A. Because we want it obtainable only under our own label.

Q. Is there an advantage to doing that?

A. Yes.

Q. What is that advantage?

A. We control the market better.

Q. When you purchased this 100 pound lot from Gentry in 1954, I believe, did your laboratory test it?

A. You say did we test it?

Q. Did your laboratory test it?

A. Yes.

Q. And did you compare it with the product that you were purchasing from Basic?

1305 A. Yes.

Q. How did the products compare quality-wise?

A. We were at that time buying sliced onions from Basic. We were comparing chips because the Gentry product was chipped, but in character and results they compared very favorably.

Q. Both products were about the same?

A. Yes, for our use.

Q. The Basic material that you tested, where did you obtain that material, just from what you had on hand or did you get a special order of it?

A. Well, we make regular tests of every shipment that comes in in our quality control department of our lab, and the samples were taken out of regular shipments.

Q. I assume you got this special 100-pound shipment from Gentry how, by rail, or did a salesman bring it around or what?

A. I wouldn't know. As I say, I don't do the buying.

Q. You wouldn't assume that this 100 pounds was a special super quality that Gentry was giving you to test, would you?

A. Well, I can best answer that by saying that when the 10,000 pounds came in, we got the same results, so I would assume it was the same quality.

Q. What was the name of the Gentry salesman who called on you in 1955?

1306 A. There was Oscar Schek, I believe, and a man by the name of Allen. I saw them so infrequently, I don't believe I would recognize them.

Q. You say usually Mr. Gilmour would see these men, is that it?

A. Yes.

Q. Did you ever talk to a Mr. Farrell of the Gentry Company?

A. I don't remember him at all, no. It could be that he has been in my office, but I don't remember.

Q. I show you Commission's Exhibit No. 57 and I ask you to read it, please. It is a letter from Perlitz to Mr. Farrell. Have you read it, sir?

A. Yes.

Q. In that letter, Mr. Perlitz notes that Mr. Farrell has received some doubletalk which has been going on between Grocery Store Products and apparently Mr. Farrell or his salesman. Would you have any idea what that doubletalk is that he is referring to?

A. No, I wouldn't. It probably is something that came up between the salesman and Gilmour. It is nothing that I had anything to do with, I am sure.

Q. When the Gentry salesman called upon you personally, did you just tell him, "No, we are not going to buy your product"?

A. They never asked me for an order because I
1307 made it very clear I wasn't doing the buying. I never interfere with the final buying of any product. I merely set the policy. If they came in to me for an order, they get an awful fast no, anyway.

Q. In other words, you left that up to Mr. Gilmour?

A. Definitely, that is the fact.

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1309 New York, New York
August 24, 1960

1310 PROCEEDINGS

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JOHN J. FRANK, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name?

A. John J. Frank.

Q. Where do you live, Mr. Frank?

A. Cincinnati, Ohio.

Q. What is your home address?

A. Number 3128 Ononta.

Q. What is your occupation?

A. President of the Frank Tea and Spice Company.

Q. Where is that company located?

A. Cincinnati, Ohio.

Q. How long have you been president of the Frank
1311 Tea and Spice Company?

A. Since 1954.

Q. What position did you hold with the company prior to that time?

A. Vice president and general manager.

Q. Would you please describe the business in which the Frank Tea and Spice Company is engaged?

A. The manufacturing of various food products, including spices, flavoring extracts, sauces, olives, peanut butter, grocery store and drug products.

Q. To whom do you sell these products, Mr. Frank?

A. We sell the products to wholesale distributors, wholesale grocers, chain stores, supermarkets.

Q. And through what channels do you sell the products?

A. Mainly through our own sales force and a few brokers in certain sections of the country.

Q. During what period of time has the Frank Tea and Spice Company sold any products to any units of Consolidated Foods Corporation?

A. Since the time, I believe, that they had purchased the companies that they now own.

Q. At one time or another, Mr. Frank, have you sold most of your products to various units of Consolidated?

A. We have sold at one time or another most of our products.

Q. How large has been the volume of your sales 1312 to Consolidated since 1950?

A. Somewhere between $35,000 and $50,000.

Q. How does that annual volume compare with your total annual sales?

A. Very small, less than half of one percent.

Q. The $35,000 to $40,000, does—

A. $35,000 to $50,000.

Q. That was an annual figure, is that right?

A. An annual figure.

Q. In what products has your company used dehydrated onion, dehydrated garlic and capsicums?

A. In the sauces that we manufacture, mustards, and we have also used them in the spice line, the salt line.

Q. Do you resell dehydrated onion and garlic in its original form?

A. We do.

Q. Is that done under your own label or under the producer's label?

A. It is done under our own label and under the producer's label.

Q. Who did the purchasing of onion, garlic and capsicums for your company since 1950?

A. Well, from 1950 until some time in 1958 or 1959, I did the purchasing.

Q. From what companies have you purchased your
1313 dehydrated onion and garlic?

A. From Basic Vegetable Products and Gentry.

* * *

1314 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 131 for identification, was received in evidence.)

By Mr. Walker:

Q. To the best of your recollection, did your company buy any dehydrated onion and garlic from Basic prior to 1951?

A. I really don't remember.

Q. Referring again to this exhibit, Mr. Frank, what is the reason for your increased purchases of dehydrated onion and garlic in the years 1946 to 1955?

A. 1946 to 1955, the increase was due to the increase in our business and to the housewife, the consumer's increased use of the garlic and onion products that are dehydrated.

Q. What specific products? Could you give us some examples, please?

1315 A. Well, we package the granulated onion and garlic in small bottles for the housewife to use. That business has grown each year because of the convenience of use.

Q. The product you mentioned, is that the same as what is called the onion salt and garlic salt?

A. No, it is not. I talked about the packaging of the granulated garlic and onion. Onion salt and garlic salt is a mixture of salt and garlic and onion powder.

Q. Has the consumption of onion salt and garlic salt increased during that period, 1946 to 1956?

A. It increased by the increase in our business, but I

don't believe the housewife is using as much today as she was using.

Q. It appears that your purchases from Gentry took a large jump up in 1956, and that during about the same time, and a little later, your purchases from Basic decreased. What is the explanation for that?

A. At the end of 1955, the beginning of 1956, we became a distributor for Gentry in our immediate locality, within a hundred miles of Cincinnati, of the products in the original packages. Our warehouse was used to distribute the Gentry products in the original packages.

Q. To whom is the product distributed by you, Mr. Frank?

A. The original packages?

Q. Yes.

1316 A. To the institutional trade, the restaurant trade and the large mass feeding operations.

Q. This exhibit also shows that your purchases from Gentry decreased very dramatically from 1957 to 1958, while at the same time your purchases from Basic went up. What is the explanation for that?

A. At that time, we made a change in distributing the Gentry products. We started to distribute the Basic products because one of our large customers had okayed the—had been buying the Basic products and would not buy anything else but the Basic products, and it was necessary for us to make this change in order to hold this business.

Q. What has been the volume of your sales to Consolidated since you stopped distributing Gentry's products?

A. It hasn't changed. In 1958, it was $50,000.

Q. Have you purchased any dehydrated onion or garlic from Gilroy Foods, Inc.?

A. In the last few months, we have purchased a few small shipments of a few hundred pounds for testing purposes only.

Q. From whom have you purchased your capsicums?

A. Our only capsicums we purchased on the outside are a Japanese variety, from dealers in New York We dehydrate our own capsicums in our Louisiana plant.

Q. Have you ever purchased any capsicums from Gentry?

A. Not the hot capsicum, no.

1317 Q. Have you purchased any paprika from Gentry?

A. Yes, we purchased paprika from Gentry in the past.

Q. On what occasion?

A. When Spanish paprika was scarce and the California prices were such that we were able to buy them.

Q. I have explained to the Hearing Examiner that we have talked about this case before today. Now, prior to the time that you were contacted in connection with this hearing, did you ever talk to anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion, dehydrated garlic or capsicums?

A. Never.

Q. Have you had any kind of a communication on that subject?

A. No, sir.

Q. What effect has the fact that Consolidated is a customer of your company had on the volume of your purchases of dehydrated onion, dehydrated garlic and capsicums from Gentry?

A. None whatsoever.

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1318 *Cross Examination*

By Mr. Hays:

Q. Mr. Frank, how long have you been aware of the fact that Consolidated Foods also sold dehydrated onion and garlic?

A. Well, since the time they purchased the Gentry company.

Q. In your direct testimony you referred to one of your large customers insisting that you sell Basic products.

A. That's right.

Q. Which customer was that?

A. I don't care to reveal the name.

* * *

1320 Q. With reference to this unnamed customer, Mr. Frank, how much did this unnamed customer purchase from you in 1958?

A. I can't give you the dollar and cents figures. I don't have them in mind.

Q. Can you give us an approximation?

A. May I make one statement, please?

Q. No, not as far as I am concerned. You can appeal to the bench. If the Examiner wishes to let you make a statement, it is all right with me.

Mr. Walker: Is the statement that you wish to make in response to the question that Mr. Hays wanted to ask you, Mr. Frank?

The Witness: About the quantity of merchandise?

Mr. Walker: Yes.

The Witness: No, sir.

1321 Q. Did you sell this same customer unnamed, in 1957, 1956 and 1955?

A. In 1956 we did. No, we did not sell him in 1956 or 1957.

Q. You did not sell them in 1956 and 1957?

A. We did not.

Q. And you started selling them in 1958, is that right?

A. That's correct.

Q. And this customer requested that you deal with Basic?

A. No, sir. This customer was buying Basic's products, and in order to enable us to sell them, we therefore purchased Basic products because their laboratory wanted Basic's product.

Q. Their laboratory felt Basic's products were better?

A. I couldn't tell you.

Q. In other words, you stopped buying from Gentry because of this customer you wanted to sell?

A. Because we did not want to carry duplicate stocks of both Basic and Gentry.

Q. And this customer wanted Basic's products?

A. That's correct.

Q. Do you know a Mr. McGill?

A. The salesman for Gentry, yes, sir.

Q. How often does he call on you and for how long?

A. I don't see him any more. I don't do the buying any longer. I used to see him when he came in. Once in
1322 a while he comes up and says hello to me.

Q. Did you see him in 1958?

A. If he was with the company then, yes. I don't remember when he started with the company.

Q. Who does your buying, Mr. Frank?

A. At the present time, Mr. William Brown.

Q. How long has he been doing that buying?

A. Since 1959.

Q. Who did the buying before he did?

A. I did.

Q. Did you see Mr. McGill when you did the buying?

A. When McGill was with the company, yes. He was not with the company when I started doing the buying from Gentry. At least, he was not calling on me.

Q. Who is Mr. Bill Brown?

A. William Brown is an employee of our company.

Q. What does he do there?

A. He is traffic manager and he is purchasing agent for several products; peanuts, garlic and onion products.

Q. Does he purchase dehydrated onion and dehydrated garlic?

A. At the present time, yes.

Q. How long has he done that?

A. Since I stopped purchasing it in 1959 or late 1958.

Q. Let us go back to the unnamed customer in 1958. What products did that customer purchase from you?

1323 A. You mean what products that we manufactured that he purchased from us?

Q. I asked you what products he purchased.

A. Practically everything we manufactured.

Q. Anything else?

A. Other than what we manufacture?

Q. Yes.

A. Yes, some products that we distribute, such as garlic and onion.

Q. And you did not sell that unnamed customer before 1958?

A. Sell him anything?

Q. Yes.

A. Certainly, we sold him.

Q. But your sales increased in 1958, is that it?

A. Our over-all sales?

Q. To that customer.

A. I have no records here of what we sold that customer since that time. Our sales have been increasing with that customer from the time we began to sell them.

Q. In other words, you did sell them in 1957.

A. We sold them some of our products, yes, but not onion and garlic products?

Q. Did you sell them Gentry products in 1957?

A. No, sir.

Q. You did or did not?

1324 A. We did not.

* * *

SAMUEL KALTMAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name?

1325 A. Samuel Kaltman.

Q. Where do you live, Mr. Kaltman?

A. In Teaneck, New Jersey.

Q. What is your home address?

A. No. 135 Vandelinda Avenue.

Q. What is your occupation?

A. I am the president of the Mutual Spice Company.

Q. Where is that company located?

A. North Bergen, New Jersey.

Q. How long have you been president of the company?

A. Since January 1, 1960.

Q. What was your position with the company prior to that time?

A. I was the sole proprietor.

Q. Was the company incorporated at that time, in 1960?

A. Yes, on January 1st.

Q. When did you start the business?

A. My father founded the business in 1902.

Q. In what business is the Mutual Spice Company engaged, Mr. Kaltman?

A. We import, grind and pack spices, seasonings and related products to the spice and seasoning industry.

Q. Do you distribute Gentry's products?

A. We do.

Q. What Gentry products do you distribute?

1326 A. Their onion and garlic products; and we also buy chili powder for repacking.

Q. To whom do you sell the onion and garlic products that you get from Gentry?

A. You mean in the original packages?

Q. Yes.

A. To the institutional trade.

Q. How do you sell to the institutional trade?

A. Through brokers.

Q. To whom do the brokers sell? What do you call the people that the brokers sell to?

A. They are called institutional jobbers or wholesale grocers who sell to the hotel and restaurant field.

Q. What products do you buy from Gentry, other than their institutional pack items that you distribute?

A. We buy their onion and garlic and chili powder in bulk, which we repack and also we use garlic and onion to blend in with seasonings, such as garlic salt, onion salt, barbecue spice and items like poultry and sausage seasoning.

Q. What items do you repack, Mr. Kaltman?

A. We repack granulated onion, minced onion, granulated garlic and chili powder.

Q. These products that you repack, as well as those that you state you prepare or mix, under whose labels are they sold?

A. Mainly under our own, the Country Tavern 1327 label, and also private brands.

Q. To whom do you sell these products that you repack or mix and sell either under your own label or your customer's label?

A. Wholesale grocers and chain stores.

Q. During what period of time has Mutual Spice Company sold any of its products to any units of Consolidated?

A. You mean the time?

Q. Yes.

A. I would say since about 1947.

Q. Are you still selling to them?

A. Yes.

Q. What products have you sold to Consolidated?

A. Black pepper.

Q. Is that private label black pepper or your label?

A. Our label.

Q. And that is the Country Tavern label?

A. That's correct.

Q. To which of the Consolidated units have you sold this product?

A. From the time prior to the time that Consolidated Foods—well, we sold—

Q. Let me rephrase the question, if you will permit me, please. To which of the Consolidated units have you sold any of your products while they were units of Consolidated?

A. We sold and still sell Monarch Finer Foods in
1328 Cumberland, Maryland, Monarch Finer Foods in Baltimore, Maryland, and we did sell from time to time the Dannemiller Company in Canton, Ohio, and Monarch Finer Foods in Cleveland, Ohio, which was the former Wiedeman Company.

Q. Is that all, Mr. Kaltman?

A. That is all that I can recall.

Q. In what business are those various units that you have described engaged?

A. They are wholesale grocers and institutional jobbers, as far as I know.

Q. Which of those units are you still selling?

A. Monarch Finer Foods in Cumberland, Maryland and Monarch Finer Foods in Baltimore, Maryland.

Q. Based upon your experience in selling the Consolidated wholesale grocery units that you have described, Mr. Kaltman, where are the purchasing decisions made?

A. They are made autonomously by the buyers who are employed by the management of those companies, so far as I know.

Q. And when you say companies, you mean each one of

these separate units that you have testified about.

A. That's right.

Q. Would you estimate what the annual volume of your sales to these Consolidated units has been in general terms over the years since 1950?

A. Since 1950, I would say it would be a maximum
1329 of about $5,000 a year.

Q. Mr. Kaltman, I think you mentioned this before, but I want to be sure that the record is clear on it. Aside from these Gentry products that you distribute, which of your products contain dehydrated onion or garlic?

A. Garlic salt, onion salt, poultry seasoning, barbecue spice and sausage seasoning.

Q. Have you ever sold any of these products to any unit of Consolidated?

A. No.

Q. Who in your company has purchased dehydrated onion and garlic since 1950?

A. I have.

Q. From what companies have you purchased your requirements of dehydrated onion and garlic?

A. Gentry.

Q. Have you used any other source for dehydrated onion and garlic?

A. From time to time we have imported a little garlic powder from Spain, a small amount.

1330 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 132 for identification, was received in evidence.)

By Mr. Walker:

Q. Mr. Kaltman, directing your attention to Respondent's Exhibit 132, this record of your purchases from Gentry shows only very small purchases in the years 1946 through 1954. What is the reason for that?

A. The reason is a simple one. For a long time, we thought we had to specialize in black pepper, and we found that our brokers could sell other items. Besides, through the efforts of the American Spice Trade Association public relations, we were educating the public on the use of all spices, including onion and garlic products as against the raw onion and garlic.

Q. I am going to interrupt you, because I wonder if you did understand the question that I asked you.

Mr. Walker: Please read back the question, Mr. 1331 Reporter.

(Question read.)

A. We didn't bother selling these items.

Q. Did you purchase any dehydrated onion and garlic from any source during the years 1946 to 1954, other than Gentry?

A. No.

Q. What accounts for the large increase in your purchases of dehydrated onion and garlic from Gentry in the year 1955?

A. As I started to explain, the demand for onion and garlic is increasing constantly due to the public relations efforts of not only the American Spice Trade Association but the American Dehydrated Onion and Garlic Association in California, of which Gentry is a member.

Q. When did you become a distributor for Gentry, Mr. Kaltman?

A. We became a distributor for Gentry, I think, in 1958.

Q. How did you happen to become a distributor of Gentry's institutional pack items?

A. We found that the demand created by the publicity was there and we decided to take advantage of it. We found that our brokers could easily sell the Gentry onion and garlic products.

Q. Did they ask you to become a distributor, did you ask

them if you could become a distributor for their products?

A. They asked us.

Q. Did you distribute any of Gentry's institutional
1332 pack items in the years 1955 through 1957?

A. We did, but only on a very small scale, and reluctantly, because it was not profitable to us because at that time we were not actual volume distributors, and we had a demand for these items in conjunction with our spice items.

Q. Mr. Kaltman, you testified in explanation of the reason for your increased purchases of dehydrated onion and garlic in the year 1955. You also testified that you became a Gentry distributor in 1958. Now, between 1955 and 1958—specifically in the year 1957 and also in 1956—your purchases of dehydrated onion were higher than in prior years. In 1957, your purchases of dehydrated garlic were considerably higher than in prior years. What accounts for that increase in those two years, Mr. Kaltman?

A. I would say, in my opinion, that, number 1, the Gentry sales organization did an excellent job of educating the chefs and cooks in the restaurant industry of the desirability of using dehydrated onion and garlic as against the raw products, and their packages were right and easy to handle and we found that it was an easy adjunct and a profitable one to our spice line which we sell to the institutional jobbers, who in turn resell to the various restaurants. Our brokers were selling more and more of it, and that's the simple answer.

Q. Are you still a Gentry distributor, Mr. Kaltman?

A. I am.

1333 Q. Have you been asked to distribute onion or garlic processed by any other companies?

A. We have.

Q. What are those companies?

A. The Basic Vegetable outfit and Gilroy Foods.

Q. What was your answer?

A. We are not interested.

Q. Why not?

A. We find that we have a very good arrangement with Gentry. Their products are in demand, and we would have to begin all over again to promote and sell another brand which we are not prepared to do.

Q. What kind of capsicums does the Mutual Spice Company use, Mr. Kaltman?

A. We use mainly capsicums from Japan and from time to time we buy some from South Carolina.

Q. What kinds of capsicums are those? What are the products that you import and buy from South Carolina?

A. Red peppers from Japan and from South Carolina, and we import paprika from Spain, Hungary and Yugoslavia.

Q. Do you buy any capsicums from Gentry?

A. We buy their paprika from time to time if the price is favorable as against the imported varieties.

Q. Are there any other capsicum products that you buy from Gentry?

1334 A. We buy all our chili powder from Gentry.

Q. How long have you been buying your chili powder from Gentry?

A. Many, many years.

Q. Since prior to 1950, would you say?

A. Oh, yes.

Q. Why do you buy your chili powder from Gentry?

A. We have found that their chili powder is good. We have no complaints. We don't care to make any changes.

Q. Mr. Kaltman, prior to the time that you were contacted in connection with testifying in this proceeding, did you ever talk to anyone about a relationship of any kind between your company's sales to Consolidated Foods Cor-

poration and your company's purchases of dehydrated onion, dehydrated garlic or capsicums?

A. What do you mean?

Mr. Walker: Read the question again, please, Mr. Reporter.

(Question read.)

The Witness: No.

Q. Did you have any kind of communication on that subject?

A. No.

Q. What effect has the fact that Consolidated is an actual and potential customer of your company had on the volume of your purchases of dehydrated onion, dehy-
1335 drated garlic and capsicums from Gentry?

A. As far as I am concerned, there is no relation between the two.

Mr. Walker: Your witness.

Cross Examination

By Mr. Hays:

Q. In 1958, how much did you sell to Consolidated Foods?

A. You mean to Monarch Finer Foods?

Q. Or any division of Consolidated Foods, yes.

A. In 1958?

Q. Yes.

A. I don't think it exceeded $2,000 in that year.

Q. What about 1957?

A. About the same.

Q. What about 1956?

A. Perhaps a little more in 1955 and 1956.

Q. Has that $2,000, more or less, been the amount of your annual sales approximately during the period from 1946 to the present?

A. To whom?

Q. Consolidated Foods.

A. From 1946? It was more between 1947 and 1951, I would say.

Q. How much more?

A. Possibly close to about eight or nine thousand dollars.

1336 Q. Since that time, it has run approximately $2,000, more or less, annually?

A. That's right.

Q. When was the first time that you were aware of the fact that Consolidated Foods also sold dehydrated onion and garlic?

A. As far as I am concerned, the only ones that sell dehydrated onion products is Gentry.

Q. You did not know that Gentry belonged to Consolidated?

A. I know that.

Q. When did you first become aware of that?

A. I became aware of it, I think, about 1949.

Q. And you have known it ever since then?

A. Yes.

Q. Does any salesman from Consolidated or Gentry call upon you to attempt to sell you any of the garlic products?

A. Certaly [sic].

Q. What is that salesman's name?

A. Mr. Oscar Schek, and Mr. Bill White.

Q. Have you ever talked to Mr. Farrell?

A. I know Mr. Farrell for many years.

Q. Did you know him when he was a Gentry salesman?

A. Yes, sir.

Q. Did he call on you?

A. Yes, sir.

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1338 DOROTHY COHEN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe: (one of the attorneys for respondent)

Q. What is your full name?

A. Dorothy Cohen.

Q. Where do you live?

A. 30 North Broadway, White Plains, New York.

Q. What is your occupation?

A. Packing materials buyer.

Q. For whom?

A. Birds Eye Division of General Foods Corporation.

Q. Where is the office General Foods Corporation?

1339 A. 250 North Street, White Plains, New York.

Q. During what period of time have you been familiar with dehydrated onion and garlic purchasing for Birds Eye?

A. Since 1949 I have been familiar.

Q. What has been the extent of your familiarity during that time?

A. I have assisted the purchasing agent in the arrangements for shipments, scheduling and so forth.

Q. Of dehydrated onion and garlic?

A. Yes.

Q. What is the name of the person you assisted?

A. Mr. W. E. Start.

Q. Is he with the corporation now?

A. No.

Q. Where is he?

A. He has retired.

Q. In what products has Birds Eye used dehydrated onion and garlic?

A. It was used in catsup, chili sauce, cocktail sauce,

frozen pies and dinners, potato puffs and potato patties and soup bases.

Q. Has it also been used in chicken a la king?

A. Yes.

Q. During what period of time since 1950 has Birds Eye packed catsup or chili sauce or cocktail sauce?

1340 A. They packed those three items through 1952.

Q. And haven't since?

A. That business was sold to Hunt Foods. We have discontinued it.

Q. During what period of time since 1950 has chicken a la king been produced?

A. May I use my records?

Q. Yes, you may.

A. Chicken a la king was packed by Birds Eye in fiscal 1956 in our Wauseka, Minnesota plant and transferred in 1957 to our Pocomoke City, Maryland plant.

Q. Was chicken a la king packed by Birds Eye prior to 1956?

A. Yes, by a co-packer.

Q. By Birds Eye?

A. It packed under the Birds Eye label.

Q. Was it packed by Birds Eye? Was it produced, processed and packed by Birds Eye?

A. Under the Birds Eye label by a co-packer.

Q. During what period of time since 1950 were meat pies and meat dinners packed by Birds Eye?

A. Pies were produced in Wauseka fiscal 1954 and dinners in 1957. In Wauseka, fiscal 1957 for pies and fiscal 1958 for dinners.

Q. During what period of time since 1950 have soup bases been packed by Birds Eye?

1341 A. Fiscal 1957.

Q. Beginning in fiscal 1957?

A. Perhaps it was the latter calendar of 1956 or the beginning of 1957.

Q. When you say "fiscal," what do you mean?

A. Our fiscal closing is March 31st, and therefore I have taken my quantities from April 1st until the end of our fiscal closing on March 31st.

Q. If you say "fiscal 1957," you refer to March 31, 1957 as the close of a year?

A. March 1960 would be our fiscal 1961.

Q. Fiscal 1961?

A. Yes. Let's say December 1959 would be fiscal 1960.

Q. Where has the purchasing of dehydrated onion and garlic for the Birds Eye Division been done since 1949?

A. Until 1953 it was done in Rochester, New York, and then transferred to White Plains.

Q. And has been done at White Plains since that time?

A. That's right.

Q. What sources of supply has Birds Eye used for its dehydrated onion and garlic?

A. We have used Basic Vegetables, Gentry and on one or two occasions we have used a small quantity from a spice house.

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1343 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 133 for identification, was received in evidence.)

By Mr. Rothe:

Q. Looking at Respondent's Exhibit 133, you will notice that Gentry sold to Birds Eye at Rochester, New York, several thousand pounds of dehydrated onion during the years 1949 through 1952. Do you now recall why those purchases were made?

A. They no doubt were made for packing of catsup, chili sauce and cocktail sauce at our Albion, New York plant.

Q. Do you remember why these quantities were purchased from Gentry?

A. Since I was not in charge of purchasing at that time —I only assisted—I cannot answer it.

1344 Q. You do not recall why they were purchased from Gentry?

A. As a second source of supply, no doubt.

Q. Can you remember what quantities of onion you were using at Albion at that time?

A. No.

Q. During the years since 1949 what has been Birds Eye's principal source of supply for dehydrated onion?

A. Basic Vegetable Products.

Q. During the period from 1949 on, do you know what quantities have been purchased from Basic Vegetable Products?

A. I was only able to trace back estimated quantities to fiscal 1955—the start of 1955.

Q. How much onion did Birds Eye buy for all of its plant locations in fiscal year 1955?

A. 11,600 pounds. This is estimated quantities.

Q. During fiscal year 1956, how much onion?

A. 20,600 pounds.

Q. During fiscal year 1957, how much onion?

A. 109,950 pounds.

Q. During fiscal year 1958, how much?

A. 56,515 pounds.

Q. During fiscal year 1959, how much?

A. 69,075 pounds.

Q. The figures you have read to us represent Birds Eye's total purchases of dehydrated onion?

1345 A. Dehydrated onion.

Q. What accounts for the increased poundage purchased in the fiscal years 1957, 1958 and 1959?

A. In 1957 that was due to the introduction of soup bases for the institutional products division. In 1959—that was the time when we discontinued using pre-mixed spice

blends and we bought the individual components. Prior to that our frozen pies and dinners had a pre-mixed spice blend which contained the onion and garlic.

Q. The onion and garlic used in those spice blends do not appear as part of the figures you have read to us?

A. That's right.

Q. You will note in Respondent's 133 that in 1957 Birds Eye, at its Pocomoke City plant, purchased 1100 pounds of dehydrated onion from Gentry and 500 pounds in 1958.

A. Yes.

Q. Do you know why those purchases were made from Gentry?

A. To look into, possibly, the use of a second source of supply, to compare quality and service with competitors.

Q. With which competitors?

A. Well, we were using Basic and occasionally I said we did buy a few shipments from a spice house.

Q. Have you purchased anything from Gentry since 1958?

A. My records don't show any purchases.

Q. Will you name for us, please, the plant loca-
1346 tions — just the plant locations — where dehydrated onion and garlic has been used by Birds Eye?

A. Caribou, Maine; Wauseka, Minnesota; Pocomoke City, Maryland.

Q. Those three plants only?

A. Albion, New York at the time prior to —

Q. When the catsup and chili sauce was packed?

A. Yes.

Q. At which plant are the soup bases made?

A. Wauseka, Minnesota.

Q. Only?

A. Only.

Q. It has been explained to the Hearing Examiner that

we have discussed with you your testimony in this case. Prior to the time that you were first contacted about testifying here, have you ever talked with anyone about a relationship of any kind between your sales — when I say "yours," I mean General Foods sales — to Consolidated Foods Corporation and its purchases of dehydrated onion and garlic?

A. Well, I knew in 1953 that Gentry became a part of Consolidated Foods, but I never got into any discussion as to the sales.

Q. So that you have never had any such discussion concerning a relationship between sales and purchases?

A. No, I have not.

1347 Q. What effect has the fact that Consolidated Foods Corporation buys from General Foods Corporation had on the volume of your purchases of onion from Gentry?

A. Apparently none.

Q. In fact, none?

A. I am afraid so.

Q. So far as you are concerned, has it had any effect?

A. It has had no effect.

Q. Why have most of your purchases of dehydrated onion and garlic been from Basic Vegetable Products?

A. They have always been, to my knowledge, the prime source of supply and since their quality was satisfactory, their price competitive and the service superb, we never found any reason to discontinue them as a supplier. As a matter of fact, I myself, in purchasing, don't feel that it is the thing to do, to discontinue a supplier if there is no reason for it.

Q. And you have never been given any such reason to change?

A. Never.

Mr. Walker: May I say for the record, because I am not

sure that Mr. Hays understands the exhibit, and perhaps that should have been more clearly stated in the title, that is, Respondent's Exhibit 133, that this exhibit shows all sales by Gentry of dehydrated onion to all plants of the Birds Eye Division. There were no sales by Gentry
1348 to any plant, including the Albion plant or the Caribou plant or the Wauseka plant at all and that is why those plants are not listed on this exhibit. These are the only plants where Gentry ever made any sales. The other thing I wanted to make clear is that we are here talking only about the Birds Eye Division of General Foods Corporation.

* * *

Mr. Rothe: I should like to introduce into evidence as Respondent's Exhibit 134 a list of the principal grocery products manufactured and sold by General Foods Corporation. This list has been compiled, or it is a copy of
1349 a portion of General Foods 1960 annual report.

Mr. Hays: No objection.

Hearing Examiner Kolb: Were these also sold to Consolidated?

Mr. Rothe: That is the nature of the testimony that we had anticipated obtaining from the General Foods people, your Honor. It is my understanding that virtually everything in the General Foods product line is sold to Consolidated Foods at one place or another and at one time or another. If there are exceptions, they are so few that it is of no consequence.

Hearing Examiner Kolb: Will you stipulate that, Mr. Mr. Hays?

Mr. Hays: Yes, sir.

Mr. Rothe: In order to complete the record on General Foods, so far as this hearing is concerned, I would like to, if it is possible to do so without objection, indicate the volume of Birds Eye sales to Consolidated Foods Corporation. We were not able to obtain the witness who could testify

in the sales area. These figures were compiled for us at the request of Mr. Wingebach who is in the room and is in General Foods legal department.

• • •

1350 Mr. Walker: In connection with the list of General Foods products that has been introduced in evidence as Respondent's Exhibit 134, we are advised that it is probably an over-generalization to say that most of these products have been sold at one time or another to units of Consolidated Foods Corporation and that all we can say is that some of them have been sold at various times to various units of Consolidated Foods Corporation, so I would like to correct that prior stipulation to that extent.

Mr. Hays: It is all right with me.

Mr. Rothe: It has been stipulated between counsel that if Mr. Herbert Claves, executive vice president of General Foods Corporation, were called to testify, he would testify that Birds Eye Division of General Foods sales to Consolidated were as follows during the following fiscal years of General Foods ending March 31st: for the fiscal year ending March 31, 1955, Birds Eye's sales to Consolidated were $16,400. In 1956, $207,000. In 1957, $405,000. In 1958, $764,000. In 1959, $931,000. In 1960, $940,000.

Mr. Claves would also testify that during the same period of time General Foods Corporation's total sales were as follows: For the fiscal year ending March 31, 1955, $886 million; 1956, $1 billion; 1957, $1 billion 59 million; 1958, $1 billion 89 million; 1959, $1 billion 135 million; 1960, $1 billion 167 million. Your witness.

1351 *Cross Examination*

By Mr. Hays:

• • •

Q. Do I understand that your testimony had reference to purchases by the Birds Eye Division of General Foods?

A. Yes; only.

Q. Does the General Foods Corporation also have other divisions which make purchases?

A. Yes.

Q. And they had those other divisions during the period 1946 up to the present time?

1352 A. I assume they did. I have always been with Birds Eye only, so I can only speak for them.

Q. How long have you been in General Foods?

A. Since 1943.

Q. Were they part of General Foods in 1943?

A. Yes.

Q. Is it true that General Foods also has other divisions which sell to Consolidated?

A. I can't answer your question in light of General Foods. I can only answer in light of Birds Eye.

Mr. Hays: Mr. Rothe, will you stipulate that General Foods also has a number of other divisions which sold to Consolidated during the period 1946 through 1958?

Mr. Rothe: Yes, sir.

Q. With reference to your particular job, what is that job?

A. Buyer.

Q. Who is your superior?

A. Mr. Caso.

Q. What is his title?

A. Purchasing agent.

Q. How long have you been a buyer?

A. Since April 1, 1959.

Q. What was your position prior to April 1, 1959?

A. Assistant buyer. Prior to that, assistant purchasing agent. Prior to that, assistant to the purchasing agent.

1353 Prior to that, purchasing expediter, inventory clerk, and back to 1943, a secretary.

Q. What was your position in 1946?

A. In 1946 I was assistant to the purchasing agent.

Q. What was your position in 1950?

A. In 1950 I was assistant purchasing agent—assistant to Mr. Start.

Q. How long was Mr. Start your superior?

A. Since 1943.

Q. Up until what time?

A. Until May of 1960.

Q. Did Mr. Start handle any purchases without your knowledge?

A. We handled them together, for the most part. He may have when I was on vacation or not in the office.

Q. Did Mr. Start have conversations with sellers at which time you were not present?

A. I can only assume that he must have had conversations with representatives of companies.

Q. In other words, in your direct testimony you didn't mean to imply that you were present each time a Consolidated or Gentry salesman called at your office?

A. No, I was not present each time.

* * *

1354 RICHARD REINECKE called as a witness on behalf of the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. What is your name?

A. Dr. Richard Reinecke.

Q. Your home address?

A. 62 Brookbee Road, Scarsdale, New York.

Q. And your occupation?

A. Vice president of American Home Foods, Division of American Home Products Corporation.

Q. Where is that company's home office located?

A. 22 East 40th Street, New York City.

Q. What are your duties as vice president of American Home Foods?

A. I am in general charge of our operations in manufacturing plants and I have certain other special duties in respect to the management and administration of sales activities in respect to banana products.

1355 Q. Do you have any duties with respect to research and development and quality control?

A. Also, I am in charge of research, development and quality control.

Q. For the division?

A. For the foods division, yes.

Q. How long have you been with American Home Foods?

A. 1959.

Q. If you can, and in a very general way, will you give us the positions you have held with American Home Foods since 1959, the significant positions?

A. In 1959 I was director of research for Clapp's Baby Foods and secretary of that company. Following that, between 1940-1946, I was made vice president in charge of research and in charge of our cooperative effort with the War Production Board. From about 1947 until the present time I was staff vice president for manufacturing, research, development, quality control, plus some additional management duties in respect to sales and the administration of our banana products.

Q. Will you describe generally the business in which American Home Foods is engaged?

A. We make and sell a rather wide variety of food products.

Q. Such as?

A. We have a line of Italian-style food specialties under

the "Chef Boy-Ar-Dee" label and the "Chef" label.
1356 We have a canned specialty line, principally chili con carne and a few associated products under the Dennison label. We have a broth and seasoning product under the G. Washington label, a line of flavoring extracts and food colors under the Burnett's label. We also sell banana products under the Chiquita label.

Q. Spelled?

A. C-h-i-q-u-i-t-a.

Q. Anything else, Doctor?

A. I may have missed some. I am not sure. There are times we have sold under private labels in the past, and currently, too.

Q. During what period of time, Doctor, since 1950 have you marketed any other products under any other labels than those you have mentioned?

A. We sold baking mixes under the Duff label until 1952. We sold baby foods under the Clapp's Baby Food label until 1953. We sold instant coffee under the G. Washington label and private labels until 1958.

Q. Generally speaking, at what locations have the various products you mentioned been manufactured since about 1950?

A. The baking mixes were made at Hamilton, Ohio. Prior to that it was made in Pittsburgh, Pennsylvania.

Clapp's Baby Foods were made in three plants, Rochester, New York; San José, California; Elkhart, Indiana and abroad.

1357 Chef Boy-Ar-Dee and Chef Italian-style products are made at Milton, Pennsylvania; Oakland, California, and, more recently, at Niagara Falls, Canada.

Burnett's flavoring extracts and colors, going backwards, they were made at our G. Washington plant at Morris Plains, New Jersey, until we sold the coffee business in 1958. Prior to that, the extracts and colors were made at Elkhart,

Indiana, in our baby food plant, and prior to that in Boston, Massachusetts.

Our Dennison's brand of products are made only in Oakland, California.

Q. G. Washington?

A. G. Washington's instant coffee and the broth and seasoning products have always been made at Morris Plains, New Jersey, until we sold the business in 1958.

Q. Since that time, where has G. Washington's seasoning and broth been made?

A. The broth operation and the extract operation were moved to our plant in Milton, Pennsylvania, where essentially it is a Chef Boy-Ar-Dee brand of manufacture.

Q. You also make G. Washington's broth and seasoning and Burnett's at the Milton plant?

A. Yes.

Q. What products have American Home Foods sold to Consolidated Foods Corporation or any of its subsidiaries and divisions?

1358 A. I would say, in general, practically all the products at one time or another.

Q. Under whose labels have they sold those products to Consolidated?

A. Both under the labels that I have mentioned earlier, and also, in a few instances, under their label. We manufactured instant coffee for them under their label, or labels, rather. We manufactured a small quantity of our institutional items under their label.

Q. Which institutional items?

A. In the Italian-style field. For a short period several years ago — I have forgotten just when it was — we did make a retail or consumer-sized Italian-style food product for Consolidated label.

1359 Q. How large has been the volume of American Home Food sales to Consolidated over the years?

A. At the present time it is in the area of $500,000 per year. Prior to that, of course, a smaller volume in dollars.

Q. Smaller previously to this year?

A. Yes.

Q. So that over the years the trend of your sales to Consolidated has been up?

A. That's correct.

Q. What has been the general trend of American Home Foods' total sales over the years?

A. Upward.

Q. What was the amount of American Home Foods' total sales in 1950, for example?

A. About $15 million.

Q. 1958, for example?

A. $65 million.

Q. What factors have accounted for this upward trend in your total sales?

A. Increased population, introduction of quite a number of brand new products.

Q. In which line are you referring to?

A. Principally in the Chef Boy-Ar-Dee brand and also the other lines, but to a lesser degree, strong, intensive and skillful, I think, advertising and marketing, good qual-
1360 ity of product and a reasonable price.

Q. When you say "skillful advertising and marketing," would you expand on that a little bit? What do you mean?

A. Our goal is to create a real consumer demand or franchise with the consumers so that they will ask for our Chef Boy-Ar-Dee products, or any of our products—so that they will really want to buy that particular brand. Advertising is directed to that objective.

Q. Have you been successful in this effort?

A. We have, indeed.

Q. In what way can you measure your success in this area?

A. Through our marketing research.

Q. You have had marketing research conducted?

A. Yes, sir.

Q. What is the result of that marketing research?

A. Those results show that we enjoy a very substantial share of the American market for Italian-style foods.

Q. Exactly what does this consumer demand or franchise mean to you?

A. It means that they are repeat customers and when they go into the market place they look for and ask for our brand of products.

Q. Through what channels do you sell your products?

A. Through the usual — our products are sold through two different areas of sales, one, to the consumer or
1361 retail market for home use and that goes through the usual grocery distributing organization of the independent grocery distributors, the chains, the wholesalers and the usual pattern of distribution in the grocery area. In the institution field there is practically the same tie-up of distribution, except it is mostly through the wholesaler. There are less direct sales to the end user than in the case of the grocery items.

Q. What would you say is the most important factor in the ability of American Home Foods to sell its products through these wholesalers to retail outlets?

A. Basically, it is our consumer demand. In other words, we create a market for them and we give them opportunity to stock an item on which they can secure a turn-over and a profit and it is to their advantage, certainly to be a part of that distribution pattern for their own profit advantage.

Q. We have talked a little bit about the increase in your sales generally. What factors would you say have accounted for your increased sales to Consolidated over the years?

A. I would say the same general factors I just described, plus the fact that I believe that Consolidated itself has grown in the size of its distributing outlets.

Q. Has Consolidated Foods Corporation ever accounted for as much as 1 percent of American Home Foods total sales?

A. No.

Q. Where are the raw materials which are used by
1362 the various American Home Foods plants purchased?

A. Raw materials are purchased by each plant according to its individual requirements.

Q. By "requirements," you mean volume —

A. Its needs.

Q. Does American Home Foods have a quality control laboratory?

A. Yes.

Q. What is the function of that quality control laboratory?

A. It establishes standards and specifications for quality of all ingredients and packaging materials — all supplies — and checks incoming receipts to see that they conform.

Q. Where is the laboratory located?

A. At each plant.

Q. Is there any centralized quality control?

A. Quality control is largely decentralized at each plant. There is a staff man at headquarters, my assistant.

Q. How about research? Where is that conducted?

A. That is largely decentralized, with each plant having its own laboratory and with some coordination from the home office, through my office.

Q. What role does the quality control laboratory play in the purchasing of raw materials?

A. It tends the specifications to the purchasing agent so that the purchasing agent may then seek the best

1363 supplies that he can secure, with respect to service and price, to meet the quality specifications at the laboratory situs.

Q. The purchasing agents must buy materials that meet those quality specifications?

A. Yes.

Q. They are not permitted to deviate?

A. They are not.

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1365 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 135 for identification, was received in evidence.)

By Mr. Rothe:

Q. If government counsel should at any time want to see the records from which these statistics were compiled, will they be made available to them?

A. Yes, sir.

Q. They will not be thrown away?

A. No, sir.

Mr. Hays: Would the doctor care to make the search for 1946 through 1954, if I request it?

The Witness: I would be reluctant to because it would take just months. Some of the records, I am sure, if they are available — no purpose is served in our company to keep this type of record that far back and it would be very laborious and they may not exist.

Q. They were not readily available to your people, in any event?

A. They were not readily available.

Q. This exhibit, Respondent's 135, indicates that your Oakland plant has never purchased onion or garlic from Gentry. Why not?

A. I believe that there were personal and historical 1366 relationships there between the purchasing people and other suppliers, such as Basic, that just caused them to purchase from sources other than Gentry.

Q. Do you know of any other source than Basic that they have used?

A. I am not sure of any.

(The document referred to was marked Respondent's Exhibit 136 for identification.)

* * *

1367 Q. What circumstances prompted you to write this memorandum, Respondent's Exhibit 136, to Mr. Powell?

1368 A. I judge that I had an inquiry from Powell as to whether our Morris Plains plant was buying any dehydrated ingredients from Gentry and so I made a reply to his inquiry.

Q. Why did Mr. Powell direct his inquiry to you?

A. His office is here in New York, on the same floor as mine, and he knew that he should come to me, by reason of me being in general charge of the plant operation, for information.

Q. Why did you tell Mr. Powell in that memorandum to suggest that a Gentry salesman should call on Frank Cooley at the Morris Plains plant?

A. Cooley was our production manager and purchasing agent for certain materials there at Morris Plains. He would be the man for any salesman to contact for most of the raw materials.

Q. Would that have been true for onion and garlic?

A. Yes.

Q. Why did you send a copy of your memorandum to Mr. Cooley, as it appears you did from Respondent's Exhibit 134?

A. This is a type of courtesy thing that I would normally do. Also, I wanted to indicate to Mr. Cooley that he should give a courtesy interview to any salesman that should call on him and follow our purchasing policies, which are substantially based on quality, price and service on the supplies we buy.

Q. Was it unusual for you to write this kind of memorandum or to send a copy to Mr. Cooley?

1369 A. This is quite an ordinary thing that goes on very routinely with all our plants. So many of our vendors, or potential vendors, come to New York to find out where to go to sell. All such inquiries are directed to my office and they get this routine-type of treatment. We introduce the prospective vendor to the purchasing man by a memo and so forth, provided there is some reasonable opportunity that we are not wasting our time or our purchasing agents are not wasting their time. If we have no potential interest in the particular subject or material —

Q. Why do you extend this type of courtesy to potential vendors?

A. It is a matter of company policy. We are publicly owned and we think we owe the business community every bit of reasonable courtesy. Many times we can do a more efficient, more economical purchasing job by the knowledge of new things that are presented to us by the vendors' salesmen.

Q. Did you have any other communication with either Mr. Powell or Mr. Cooley concerning this subject — that is, other than Respondent's 136?

A. I doubt it. I don't remember any.

Q. What effect did your memorandum to Mr. Powell, with a copy to Mr. Cooley, have on Morris Plains' purchases of dehydrated onion?

A. I have no idea.

1370 Mr. Rothe: I should like to introduce into evidence Respondent's Exhibit 136.

Mr. Hays: No objection.

Hearing Examiner Kolb: That will be received as Respondent's Exhibit 136.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 136 for identification, was received in evidence.)

By Mr. Rothe:

Q. Other than the communication and memorandum with Mr. Powell, prior to the time you were contacted about testifying in this case, had you talked with anyone concerning any kind of relationship between American Home Foods sales to Consolidated Foods Corporation and its purchases of dehydrated onion or garlic?

A. No.

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Cross Examination

By Mr. Hays:

1371 Q. Doctor, what was your position with American Home Foods through the period 1946 to 1948?

A. Vice president for research and in some time there, I think around 1947 or 1948, I also handled the manufacturing thrown in with it. For all practical purposes, that whole period was manufacturing, research, development, quality control.

Q. Do you know from what sources you purchased dehydrated onion and dehydrated garlic in the years 1946, 1947 and 1948?

A. Only by reason of my recent review of these records.

Q. From what companies did you purchase dehydrated onion and garlic in those years?

A. I know we bought—let me take a look at my notes, which I made from the records. These were all suppliers of onions and garlic? Was that your question?

1372 Q. In 1946, 1947 and 1948.

A. I wouldn't have it by years.

Q. You do not know from whom you purchased in those years?

A. I have the records in my office. I don't have the records with me, other than those figures that are here (indicating).

Mr. Rothe: Referring to Respondent's Exhibit 135?

The Witness: Right.

Mr. Hays: I don't believe there is anything on those years in Respondent's Exhibit 135, is there?

The Witness: No, they started at '55. That's right.

By Mr. Hays:

Q. I show you Respondent's Exhibit 135 and ask you, for the year 1952 do you know the reason for the decline in purchases from 1951 by the Milton plant, that is, purchases from Gentry?

A. I really can't speak for it because of our decentralized purchasing policy.

Q. In that particular year, 1952, did you actually make any purchases?

A. Personally, I did not.

Q. In that year who made those purchases?

A. Whatever purchases were made were made at our various plants.

Q. Did you make any purchases in 1953?

A. I did not, personally.

1373 Q. Did you make any purchases in 1954?

A. No, sir.

Q. In other words, the purchasing is done at the plants?

A. That's correct.

Q. Do salesmen call upon you personally, or did they during this period, normally?

A. They would only call to inquire as to where to go to do their selling. I would direct them to the purchasing points.

Q. In other words, from 1949 to the present the actual purchasing has been done at the plants by persons other than yourself; is that correct?

A. That's correct.

Q. When was the first time you remember seeing Mr. Joe Farrell?

A. I don't know the gentleman.

Q. You have never seen him?

A. Not to my knowledge.

Q. I direct your attention to Respondent's Exhibit 136 and ask did you send a carbon copy of Respondent's Exhibit 136 to Mr. Farrell?

A. I don't know Mr. Farrell.

Q. Did you send a carbon copy to him?

A. No. I couldn't. I wouldn't know where to send it.

Q. Is this your handwriting on the bottom, "CC Joe Farrell, 11,25"?

1374 A. Yes [sic].

Q. Whose writing is it?

A. I wouldn't recognize it.

Q. Presumably, it was someone who had access to this document when it was in your files; is that correct?

A. This document wouldn't be in my files.

Mr. Walker: I object. The record was quite clear on direct examination as to where this document came from. There is no proof that it came from this witness' files.

Mr. Rothe: This document was taken from the Gentry files by the Federal Trade Commission investigator. That was stated on the record.

Q. Is that your name signed on the bottom of this document?

A. Yes.

Q. At some time this document was before you, wasn't it?

A. At the time I signed it.

Q. Then what did you do with it?

A. Sent it to Mr. Powell—my secretary did.

Q. As far as you know, no one in your office sent this letter to Mr. Joe Farrell?

A. I have no knowledge on the subject.

Q. I redirect your attention to Respondent's Exhibit 136

and the notation, "Also have Gentry representative contact Mr. E. F. Reeser." Is that in your handwriting?

A. No, sir.

1375 Q. Do you recognize that handwriting?

A. I am certainly not a handwriting expert.

Q. Do you recognize the handwriting?

A. I suspect it might be Mr. Powell's, but that would be a pure guess. I would say it looks something like it.

Q. Did you discuss with Mr. Powell the fact that you were going to testify here today?

A. No, sir.

Q. Did you discuss it with Mr. Reeser?

A. No, sir.

Q. Have you ever met Mr. Kennedy, the president of Consolidated Foods?

A. I am not certain. I may have back in the late '40's when I was in Consolidated's office in Chicago, but I am not sure.

Q. Do you have anything to do with selling?

A. Yes, sir.

Q. What do you have to do with that activity?

A. At the present time it is confined to banana products.

Q. How long have you had anything to do with selling activity in connection with banana products?

A. Since the middle of 1959, summer of 1959.

Q. During the period from 1949 to the present, have you had anything to do with selling, other than banana products?

A. Private label instant coffee.

1376 Q. When did you have anything to do with that activity?

A. Going backwards, from 1958 back to — whenever we started selling private label instant coffee. I am not quite sure. There was a period of five or six years, I would guess.

Q. What did you do in connection with that activity during that period — you personally?

A. I dealt with certain selected customers as to their purchases of private label instant coffee.

Q. You personally called on certain selected customers?

A. I did.

Q. Which customers did you personally call on?

A. Safeway Grocery Company. I worked with the Duncan Coffee Company of Texas, the Ferguson — it was Victor Coffee in New England, out of Boston — Stanley Ferguson, I think it was. I worked some with Kroger in combination with one of my associates with Consolidated.

Q. You say you contacted Consolidated Foods?

A. Yes, I did. That was the occasion of my first visit to Consolidated's office.

Q. When was that?

A. I could probably find it in my files. That was one of the very first customers that we approached, along with Safeway and Kroger, because our green coffee men at Consolidated and we went out to see him at Consolidated.

Q. You did?

1377 A. I did, personally.

Q. Did you commence selling Consolidated Foods this coffee?

A. Yes, we did.

Q. Were you pleased to make that sale?

A. I was. I might say that they later discontinued us.

Q. Doctor, on direct examination you testified that the sales to Consolidated Foods represented less than one percent of the total sales of your company. Notwithstanding this fact, have you always regarded Consolidated Foods as a desirable customer or prospective customer?

A. Yes.

Q. When you made this contact, selling this private label coffee, or attempting to sell it to Consolidated, what

was the name of the individual you contacted at Consolidated?

A. I can't remember the man's name. Was there a Richmond at Consolidated? Maybe some of the people here can tell me. The latter was Alan Cummings. The last one I dealt with was Alan Cummings.

Q. Is he the president or the vice president's son?

A. He was the president's son.

Q. When dealing with these people, did you attempt to establish friendly relations with them?

A. I really didn't have the opportunity. I was probably in their offices twice over a period of three, four or five years.

Q. At that time you attempted to be friendly—

1378 A. Friendly, courteous, surely. Beyond business friendliness or courteousness, nothing.

Q. At the same time that you contacted these various companies with reference to the sale or prospective sale of private label coffee, did other members of your company, or employees, contact other customers or prospective customers with reference to the sale of private label coffee?

A. They did. There were three of us who were doing that type of selling.

Q. Who determined which customers would be contacted by whom?

A. Generally, it was done by the three of us, as to who had time available and who might have other reasons to be in the city of the potential customer. Kroger's headquarters are in Cincinnati. One of my associates, Mr. Harry P. Logle was there and he probably made more calls in that respect than I did, but I made perhaps a third of them or a quarter of them and took care of the business while he was on vacation or out of town.

Q. What was his title at that time?

A. He was a vice president.

Q. Who was the other individual that attempted to sell—

A. Harold Hanson, who was the green coffee buyer for our headquarters at our Morris Plains plant who had quite a few friends and associates in the coffee industry.

1379 He had been in it all his life and knew people and the people he knew best and knew him best, naturally, he would work with them.

Q. Isn't it a fact, Doctor, at this very same time that you and these two other individuals were contacting various concerns that you have named with reference to the prospective sales of private label coffee — at the very same time your company had a number of salesmen calling upon these specific firms attempting to sell them other products?

A. That is true.

Q. Why did you not delegate to these salesmen the attempted sale of this private label coffee?

A. That wouldn't be efficient sales management. Any private label goods is a very constantly changing undertaking and we couldn't afford to have our regular salesmen spend time on such an undertaking. None of our private label instant coffee was sold by our regular sales department in the grocery sizes.

Q. Just what do you mean by "constantly changing" type of operation?

A. Product specifications and packaging specifications.

Q. Anything else?

A. That is essentially it. The general nature of the product and its package were constantly changing during the early days of the great growth of the instant coffee business, of which we were a part.

1380 Q. Isn't it normal practice, with reference to private label selling, to contact the top management of your prospective customer?

A. It all depends upon the size of the organization. If it is a small company — most presidents of large companies

don't spend any time buying.

Q. When I say top management, I don't necessarily mean the president, but I mean someone who is at an equal level, in the company you were contacting, with yourself. Don't you normally contact someone at the presidential or vice presidential level?

A. Not necessarily.

Q. Did you do so with reference to Consolidated Foods?

A. I don't know what Alan Cummings' title was.

Q. At that time did you know he was related to the president of the company?

A. Yes.

Q. I redirect your attention to Respondent's Exhibit 135 and in the course of your direct examination I believe you stated that some of the information contained thereon came from your books and records. Is that correct, Doctor?

A. Yes, sir.

Q. Just what books and records do you have reference to?

A. I can't state specifically. I know in some cases 1381 they were purchase orders, sometimes vouchers — it went through our regular routine accounting.

Q. Who actually compiled this data?

A. The Oakland data came from our office manager who is in charge of statistics and that type of office routine. The Morris Plains data came from the office of our purchasing agent.

Q. You didn't ever see the data from which this information was compiled, did you?

A. No. I saw the reports from those individuals.

Q. During the period 1945 to the present, did your Rochester plant purchase any dehydrated onion or dehydrated garlic from the Basic Vegetable Products Company?

A. I don't know.

Q. In other words, you are not prepared to state that

the information contained on Respondent's Exhibit 135 with reference to purchases from Basic is correct; is that true?

A. I couldn't hear that.

Q. Are you prepared to state, in view of that fact that I brought to your attention, that the information contained on Respondent's Exhibit 135 with reference to purchases from Basic Vegetable Products Company is correct?

Mr. Rothe: I must object to that. After all, the note at the bottom of the exhibit says that no data was available for Basic sales at any other plant than those listed,
1382 Milton and Oakland. It states no data was available.

A. We sold our baby food business in 1953 and I don't know where the records are. I doubt if we have any. Rochester was a baby food operation and that business was sold in 1953 and I don't know where the records are.

• • •

1383 Q. Do you have a Mr. Romei working for you in your company?

A. Yes.

Q. How long has he been working for you?

A. He is at our Milton plant. He probably started in the employ there about, roughly, 1945. I don't know exactly.

Q. What is his job now?

A. Purchasing agent, director of purchases.

Q. How long has he been director of purchases?

A. I am not certain.

Mr. Hays: That's all I have, your Honor.

Redirect Examination

By Mr. Rothe:

Q. I know it is difficult to remember back this far, but can you give us some idea of whether or not your selling of private label instant coffee to Consolidated was before or after 1950?

A. I don't have any distinct recollection. I may have it in my files in my office. We may have disposed of a lot of that type of records. I would have no way of recalling for certain, the date.

Mr. Rothe: That's all.

1384 *Recross Examination*

By Mr. Hays:

Q. When did you have anything at all to do with selling private label coffee?

A. I don't know the dates.

Q. When I asked you—

A. I know we discontinued in 1958, but when we started, I am not certain.

Q. I believe, and I think I am correct in this, you indicated that you had been engaged in selling private label coffee for about the five years previous to 1958.

A. I am not certain. That is approximate, yes.

Q. On the basis of that approximation, it would indicate that you were contacting Consolidated Foods in approximately 1952 or 1953 or 1954; is that correct?

A. I am unable to say whether it is correct or not.

Q. Is that your best approximation?

A. That is not my best approximation; I am not making any approximation on that point.

Q. Do you have records to indicate when the company first went into the business of preparing private label coffee?

A. I may have.

• • •

1389 New York, New York
August 25, 1960

1390 PROCEEDINGS

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JOHN ROMEI was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name?

A. John Romei.

Q. Where do you live?

A. Milton, Pennsylvania.

Q. What is your home address?

A. 615 Upper Market Street, Milton, Pennsylvania.

Q. What is your occupation?

A. Purchasing agent for American Home Foods at the Milton, Pennsylvania, plant.

Q. That is the American Home Foods Division of American Home Products Corporation; is that right?

A. Yes.

Q. About how long have you held that position of Purchasing Agent?

1391 A. Fifteen years.

Q. Would you please describe what products are produced at the Milton plant?

A. We produce the Chef Boy-Ar-Dee label, which is a line of Italian foods, and some Mexican-type foods. We also produce the "Chef" line, which is private label institutional. We produce the Burnett extract line and the G. Washington seasoning and broth line.

Q. What kind of products are the Chef brand institutional items that you mentioned, Mr. Romei?

A. Mostly Italian. I would say the rest are American-type products.

Q. Which of the products produced at the Milton plant use onion or garlic?

A. I would say 90 percent of the line uses onions and

garlic in the Chef and Chef Boy-Ar-Dee lines.

Q. Is any onion or garlic used in the food seasonings or broth made there?

A. Yes, there is in the broth and seasoning.

Q. And you use dehydrated onion and garlic?

A. Yes.

Q. Do you use any types of onion and garlic other than dehydrated onion and garlic?

A. No — I'm sorry. We are currently using oil of garlic in place of dehydrated garlic.

1392 Q. During what period of time have you used this oil of garlic?

A. I believe we have been in it a year and a half now.

Q. What caused you to start using it?

A. The economics of the change.

Q. By economics, you mean the cost factors?

A. Cost of oil of garlic is considerably less than dehydrated garlic.

Q. Where do you buy your oil of garlic?

A. Mostly through New York outlets, such as Fritsche Brothers. They are our exclusive supplier at the moment.

Q. Have you ever used any oil of onion?

A. We are currently experimenting with it. It is not being used in more than one or two products, and that is purely as experiments.

Q. Do you have any intention of expanding the use of that?

A. It is our intention to eventually drop the complete dehydrated onion products if oil of onion is successful.

Q. Since 1950 who was making the decisions as to the sources of supply for dehydrated onion and garlic at the Milton plant?

A. I was.

Q. From what companies has the Milton plant purchased its requirements of dehydrated onion and garlic?

A. From both Gentry and Basic Vegetable Prod-
1393 ucts of Vacaville, California.

Q. This is Respondent's Exhibit 135 which is a tabulation showing the purchases of dehydrated onion and garlic by the American Home Foods Division of American Home Products Corporation. I would like to have you examine this, please.

Mr. Walker: This is the exhibit that was introduced yesterday, your Honor.

Q. Directing your attention to that portion of Respondent's Exhibit 135 that deals with the purchases of dehydrated onion and garlic at the Milton plant from Basic Vegetable Products, Inc., did you purchase any dehydrated onion and garlic from Basic prior to 1955?

A. Yes, we did.

Q. For about how many years, to the best of your knowledge, Mr. Romei, have you purchased dehydrated onion and garlic from Basic?

A. In all of my fifteen years, and prior to my taking over the job, Basic was a supplier for an unknown amount of years.

Q. Do you know what onion and garlic was used before the Milton plant purchased from Basic?

A. We changed in 1946 from fresh onions. We were using dehydrated garlic.

Q. Did Basic play any part in the conversion from fresh onion to the dehydrated onion?

A. I would say they were instrumental in convinc-
1394 ing our laboratory and new-product development people that dehydrated was possibly better than fresh. They showed us the way.

Q. What was the approximate volume of your purchases of onion at the Milton plant from Basic in the years 1950 to 1955, not including 1955?

A. Onions and garlic combined?

Q. Just onion, please.

A. I would say close to 200,000 pounds a year.

Q. What was the approximate volume of your purchases of dehydrated garlic from Basic in the years 1950 through 1954?

A. Approximately 50,000 pounds of garlic.

Q. And the figures you have given for both onion and garlic are annual figures; is that right?

A. That's right.

Q. Respondent's Exhibit 135 shows that your first purchases from Gentry of any consequence were in 1950. Is that right, Mr. Romei?

A. It is, with the exception of a small sample in 1949 for our laboratory people to analyze.

Q. What factors entered into your decision to commence purchasing from Gentry in 1950?

A. I would say that we considered it about time that we would have a second supplier on the scene. The Korean War was commencing and we thought it would be good policy to have an insured source of supply.

1395 Q. Why did you not develop a second source of supply on onion and garlic prior to 1950?

A. The business didn't warrant dividing up the small requirement that the Chef plant had.

Q. Was there any increase in your needs for dehydrated onion and garlic in about 1950?

A. Yes. The Korean War broke out and purchases increased substantially in the year 1951, due to government rations, which we were producing.

Q. Were you selling your Italian foods at that time?

A. Yes.

Q. During what period of time would you say that the Italian food products that you sold have become greatly popular?

A. I believe the years from 1954 on saw our greatest

growth. Our business has possibly grown three-fold.

Q. Why did you choose Gentry as your second source of supply?

A. We considered Gentry the only other supplier in the field. We had known of smaller concerns in the business, but we realized Gentry was the only other competition to Basic. We also discovered, through investigation, that both more or less dehydrated the same common product.

Q. What was that common product that you are referring to?

A. Both companies dealt in the California globe onion. We felt we would be able to standardize our product
1396 better. Other suppliers who were available more or less dehydrated onions from all parts of the country, giving us an inconsistent product.

Q. Is that California onion that you referred to the white onion?

A. The white globe, I believe.

Q. Did you compare the quality of the Gentry products with those produced by other manufacturers of dehydrated onion and garlic?

A. With none other than with Basic.

Q. But you knew what kind of onions were used by other producers, is that right?

A. Yes, sir.

Q. What accounts for your greatly increased purchases from Gentry after 1950?

A. I believe during this Korean War period Gentry decided to sell through distributors and at that time the Baltimore Spice Company and their salesman, Jim Shanklin, took over the account. These people were personable-type of people and, as a result, good pushers were able to develop the account faster than previous Gentry people who, more or less, up to that moment were not people that I particularly cared for.

Q. Are there any other reasons for your increased purchases from Gentry since 1950?

A. At that time the Chef business began to expand
1397 from a rather small amount of dollars to one of considerable stature. Our requirements increased from, roughly, 300,000 pounds per year of product in 1951 to well over a million pounds of product by 1959. We needed two suppliers.

I more or less put the business on a 60-40 basis, favoring Basic as our major supplier.

Q. Directing your attention to this data on Respondent's Exhibit 135, what accounts for the very large increase in your purchases from Gentry in 1951 as compared to 1950 of dehydrated onion?

A. 1951 was the year of the Korean War when we had unusually large requirements for government contracts. Material was very scarce. We were able to get help from Gentry for additional tonnage, even though our previous purchasing record had not warranted it.

Q. I have explained to the Hearing Examiner that we have talked about this case, Mr. Romei, and I have told him that we have discussed it both when Mr. Rothe was in your office in June and again last week. Prior to the time you were contacted to testify in this matter, had you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion or garlic?

A. I had not.

Q. What effect has the fact that Consolidated is a
1398 customer of American Home Foods had on your purchases of dehydrated onion and garlic from Gentry?

A. None whatsoever.

* * *

By Mr. Walker:

Q. I asked you on your direct examination a few mo-

ments ago whether you had ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion and garlic and I want to ask you also whether you ever had any kind of communication on that subject.

A. I didn't have any kind.

Mr. Walker: That's all.

Cross Examination

By Mr. Hays:

Q. Is the Baltimore Spice Company still a distributor for Gentry products?

A. I believe that under a different setup, one that 1399 doesn't permit them to participate in larger customers' accounts — it is mostly small volume.

Q. Have you made any inquiry to determine how oil of garlic is processed?

A. Pardon me?

Q. Have you made any inquiry to determine how oil of garlic is processed?

A. Yes, we have.

Q. How is it processed?

A. We know only that most of the material is from foreign sources. How it is physically processed, I did not — I do not know.

Q. Did you make any inquiry to determine how oil of onion is processed?

A. We have not.

Q. Do you know where oil of onion is processed?

A. We believe, again, it is mostly foreign material.

Q. Do you plan to substitute oil of onion if it is successful —

A. We do.

Q. — if success is indicated by your experiments, in place of dehydrated onion in 100 percent of your products

in which the dehydrated onion is now being used?

A. I would say in any processed product, we would replace it. By that I mean a cooked-type of product. It
1400 would not be replaced in seasoning and broth, which is a dry mix.

Q. Thus, if such substitution is made in the future, you will not be purchasing any substantial amounts of dehydrated onion from either Basic or Gentry?

A. That's correct.

Q. Did you purchase any dehydrated garlic in 1959?

A. Yes.

Q. When did you begin substituting oil of garlic for dehydrated garlic?

A. We have been on it, experimentally, for about four years, but I believe by the fall pack of 1959, we were in it almost 100 percent — no, we were in it for all sources. I'm sorry. We are now within one month of being in it 100 percent.

Q. In other words, next year you do not plan to purchase any dehydrated garlic from either Basic or Gentry; is that correct?

A. Our current commitments eliminate garlic from both suppliers.

Q. I am not sure that I understood you correctly with reference to your testimony about the Chef line. Did you indicate that that was a private label?

A. Yes, Chef is private label.

Q. And whose label is it?

A. American Home Foods label. The "Boy-Ar-Dee" word has been left off.

Q. And that brand is sold to whom?

1401 A. Institutional users.

Q. Was that brand sold to Consolidated Foods?

A. It could have been. I believe we would pack for Consolidated under their own brand names.

Q. What brands did you pack under during the period 1950 through 1958 — that is, pack under for Consolidated Foods?

A. I do not know.

Q. Am I correct in my understanding that you personally engaged in some selling for American Home Foods?

A. I have nothing to do with sales.

Q. You personally did not do any selling from the period 1950 through 1958?

A. That's correct.

Q. When did you first become aware of the fact that Gentry was owned by Consolidated Foods?

A. I believe at the time of the acquisition and, at this moment, whether it was 1950 or 1951, I do not know.

Q. Do you recall the name of the Gentry onion and garlic salesmen that contacted you for the purpose of making the sales of onion and garlic in 1950?

A. It could have been a Mr. Farrell or an Oscar Schek.

Q. Do you recall Mr. Farrell calling upon you in 1951?

A. I believe I have visits from him every year.

Q. Since the conclusion of the Korean War, what have been your reasons for continuing to have a second 1402 source of supply for dehydrated onion and garlic?

A. Because of the expanding Chef business, which grew tremendously over this period of years. We are talking about a company growing from, possibly, five million to sixty million.

Q. Do you also purchase other products?

A. From other people?

Q. Other sources, yes, sir.

A. I don't get your question.

Q. It is my understanding that you are the purchasing officer at the Milton plant.

A. Yes.

Q. Do you purchase other products other than dehydrated onion and garlic?

A. I purchase everything consumed at the Milton plant.

Q. What are the principal products that you have purchased since 1950?

A. For all of our production?

Q. Yes.

A. Such as flour, cans, boxes, cases, tomato puree, onions and garlic, oils, shortenings. They would be the products.

Q. Do you at the present time have an alternative source of supply for boxes?

A. Yes, sir.

Q. Who are your box suppliers?

1403 A. Folding or corrugated?

Q. Folding.

A. Caner [sic] Corporation of America, New Haven Folding Box, Milprint.

Q. Do you have an alternative source of supply for your tomato puree?

A. We produce our own needs at the present time.

Q. In the purchase of any of your products do you concentrate the purchase of any of those products in one supplier?

A. My basic policy is to have one good supplier, but also two and three sources.

Q. In other words, in so far as most of your products are concerned, you have one principal source of supply?

A. I would say that most of my suppliers would be on a 60-40 basis, no matter what the commodity or product.

Q. All during the period from 1950 through 1958, have you had that general 60-40 basis prevailing?

A. Yes, sir.

Q. During the period from 1946 to 1950 did this 60-40 basis prevail?

A. No, sir. Are you referring to onions and garlic only?

Q. On other products.

A. Yes, we did.

Q. On other products?

A. Yes.

1404 Q. I refer your attention to Respondent's Exhibit 135. Why did you not put dehydrated onion purchases on a 60-40 basis in 1950?

A. The volume didn't warrant a second supplier.

Q. Why did you not put it on a 60-40 basis in 1951?

A. Our major supplier in 1951 was Basic Vegetable. The help secured from Gentry was because of the war.

Q. In other words, you didn't put them on a 60-40 basis in 1951 because you were only buying from Gentry because of the war, is that correct?

A. That's correct.

Q. I notice that in 1952 you bought substantially less from Gentry than in 1951. Why did you not make your purchases on a 60-40 basis in—

A. The volume declined in those two years.

Q. The volume of your business?

A. Of purchases, yes, sir.

Mr. Walker: In which two years?

The Witness: In 1952 and 1953 the volume of business, in relation to 1951, declined. We were in war work in 1951.

Q. During the years 1950 through 1953 did you have your other suppliers on a 60-40 basis?

A. It is very possible.

Q. In 1954 you didn't make your dehydrated onion purchases on a 60-40 basis. What was the reason for not

1405 doing so in 1954?

A. Do these figures indicate that? We do not have 1954 basic figures to answer that.

Q. I believe, if I recall your direct testimony, that you estimated in each of the years 1946 through 1954 your plant

purchased about 200,000 pounds of dehydrated onion from Basic.

A. That's correct. What is your question?

Mr. Hays: Will you read my question, please?

(Question read.)

A. No reason.

Q. Have you ever indicated to anyone that it was sound business, from your point of view, to purchase supplies from companies to whom you also sold your finished product?

A. In American Home Foods we are not aware, in manufacturing, at my level who most of our customers are.

Mr. Hays: Please read my question. I don't believe the answer was quite responsive.

(Question read.)

The Witness: I have not.

Q. Have you ever indicated to anyone, you personally, that it was sound business for you to purchase dehydrated onion and garlic from Consolidated since they also purchased some of the products sold by American Home Foods?

A. I did not.

1406 Q. Have you ever met Mr. Kennedy of Consolidated Foods?

A. I do not know him.

Q. Have you ever met Mr. Bellisime who formerly was employed by the Gentry Division?

A. Yes.

Q. When did those meetings occur?

A. With Mr. Bellisime for many years, up until the time he left the company.

Q. Did he call upon you to attempt to sell you dehydrated onion and garlic from Gentry?

A. Yes.

Q. Continually up until the time he left the company?

A. Yes.

Mr. Hays: That is all I have, your Honor.

1407 *Redirect Examination*

By Mr. Walker:

Q. On cross examination Mr. Hays asked you the question to this effect: Why did you not purchase your onion requirements on a 60-40 basis between Gentry and Basic in the year 1950 and you replied, I believe, that your volume didn't warrant a second supplier.

A. Correct.

Q. By that did you mean that the volume didn't warrant any second supplier or that the volume did not warrant a 60-40 supplier, or what did you mean?

A. Up until 1950 it did not warrant a second supplier because of the volume involved. The one purchase in 1950 constitutes one carload, as a trial, a foot in the door, and could have come about with a lower price to get us started with Gentry. I don't recall the situation.

Q. It was in 1950, you testified on your direct examination, that you decided to start using Gentry as a second source of supply?

A. Yes.

Q. Is it your practice when you choose a second source of supply to immediately give roughly 40 percent of your business to that second source?

A. No, sir.

Q. What is your practice in this regard?

1408 A. 60-40 means nothing. We can have suppliers on 90-10, 80-20. We consider we have a second supplier and as they earn their way in their volume will increase.

Q. What do you mean when you say as they "earn" their way in?

A. As they become acceptable to plant people through service and quality, consistency of all the factors involved in selling a company.

Q. Because there may be some misunderstanding on this point, do you generally buy your onion in carload lots?

A. Correct.

Q. When you use these figures, as you have in your answers here, 60 percent-40 percent, how do you mean that? Do you mean exactly 60 percent of each order as you find you are going to need some more onion goes to one and exactly 40 percent of that goes to another?

A. No. I think you are using figures that mean nothing. It isn't a 60-40; it is a generality that we have one supplier sharing more of the business than another supplier.

Q. You try to give the business to two suppliers using this 60-40 as a rough rule of thumb? Is that what you mean?

A. Yes.

Mr. Walker: Nothing further, your Honor.

Recross Examination

By Mr. Hays:

1409 Q. What did you mean when you said it was customary to let a supplier earn his way in?

A. I believe I elaborated that a supplier must perform, quality must be consistent; deliveries on time, laboratory analysis must indicate everything is what we are buying, and personalities enter into the business: likeness for salespeople or dislikes. There were changes made by Gentry over the years. Some people were more likeable than others. These things enter into the picture.

Q. Since 1950, and continuing up until 1954, did the Gentry service get any better over that period?

A. I would say it was equally as good as Basic's.

Q. No. I am referring to whether the Gentry service got any better. Was it better in 1951 than in 1950?

A. Over that short span, I could not say yes. I would say over a period of four or five years reliability of product being available became better.

Q. Did their service become any better from 1950 to 1955?

A. Yes.

Q. Did their sales effort become more intense during that period?

A. Yes.

Q. Did they have better salesmen during that period?

A. To my knowledge, more likeable, yes.

* * *

1410 EDWARD A. DUBIEL, called as a witness on behalf of the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Edward A. Dubiel.

Q. Where do you live?

A. Rochester, New York.

Q. What is your home address?

A. 100 Frankland Road.

Q. What is your position?

A. Purchasing agent for the R. T. French Company.

Q. Where is that located?

A. Mustard Street, Rochester, New York.

Q. Is that No. 1 Mustard Street?

1411 A. That is the official address.

Q. Where are your plants located?

A. The principal plant is in Rochester, New York. We also have plants in Souderton and Shelley, Idaho.

Q. How long have you been purchasing agent for the R. T. French Company?

A. Since 1952.

Q. What was your position with the company prior to that time?

A. I was assistant purchasing agent from 1949 to 1952.

Q. In what business is the French Company engaged?

A. A food manufacturer.

Q. What food products do you manufacture?

A. Prepared mustard, Worcestershire sauce, barbecue sauce, spaghetti sauce mix, a line of extracts, dehydrated potato products, a line of bird products, bird foods, to name a portion of the line.

Q. Do you also package spices?

A. Yes.

Q. A full line of spices?

A. Yes, we do, ground and whole.

Q. To whom does the French Company sell its products?

A. To the grocery trade, retail.

Q. Do you sell to wholesale grocers?

A. Yes.

1412 Q. Do you also sell direct to retail chains?

A. Yes.

Q. Through what channels do you market your products?

A. We have our own sales organization.

Q. Under whose labels does French sell its products?

A. Almost all under the R. T. French Company label.

Q. Do you do any private label packing?

A. We have what amounts to one customer, yes.

Q. Who is that customer?

A. The Safeway Stores.

Q. At our request have you made some investigation of the sales of the French Company to Consolidated Foods Corporation?

A. I have.

Q. During what period of time has the French Company sold its products to any units of Consolidated Foods Corporation?

A. Well, for some time prior to my employment by the company, at least.

Q. What products have been sold to Consolidated?

A. Our prepared mustard, Worcestershire sauce, barbecue sauce mix—general product line, with the exception of spices.

Q. You have not sold any spices to Consolidated?

A. No, sir.

Q. Have you ascertained for us the approximate volume of the French Company sales to Consolidated in the last few years?

1413 A. Approximately $200,000 a year.

Q. What has been the trend of French's sales to Consolidated in recent years?

A. Up, generally.

Q. During the last few years what has been the trend of French's sales to all of its customers?

A. Also up, generally.

Q. What has been the reason for that increase?

A. We have a wider product line than we did ten years ago and we like to think we have better customer acceptance of the line we offer.

Q. During the past ten years, Mr. Dubiel, what percentage of French total sales has been accounted for, roughly, by its sales to Consolidated?

A. Less than one percent.

Q. How has this customer acceptance that you mentioned been developed?

A. By improvement in our products.

Q. Did you advertise your products also?

A. Yes, it is a nationally advertised brand.

Q. Has that advertising played any part in the increased consumer acceptance of your product?

A. I am sure it has.

Q. In which of French's products are dehydrated onion and garlic used?

1414 A. They are used generally as ingredient items. It is an ingredient in the spaghetti sauce mix, the barbecue sauce, prepared mustard. It is an ingredient in a chili product.

Q. Do you package and sell any onion and garlic products?

A. Yes, we do.

Q. What are those products?

A. We have flavored salts: garlic salt, celery salt. We also put out a straight pack of onion, such as instant minced onion. We have an onion flake. We have a garlic powder.

Q. How long have you had the instant minced onion on the market?

A. About three years—perhaps four or perhaps even five. Something less than five. It is a relatively new item.

Q. How has it been doing?

A. Well.

Q. Do you mix your own spaghetti sauce mix?

A. We mix our own.

Q. How about your barbecue sauce? Do you use in that a prepared barbecue spice mix or do you mix your own?

A. We mix our own.

Q. Which of French's products account for most of the dehydrated onion and garlic that you use?

A. I would say most of it is sold as a resale item. In other words, celery salt, onion salt or instant minces
1415 had onion. As an ingredient, it would be a small percentage of the whole.

Q. Do you purchase any dehydrated onion or garlic for the two plants you mentioned in Souderton, Pennsylvania, and Shelley, Idaho?

A. No, sir. Neither of those two plants use either onion or garlic.

Q. Who has made the decisions as to French's sources of supply for dehydrated onion and garlic since 1950?

A. I have, primarily.

Q. Have you worked with anyone else during this period?

A. Yes, I had a superior, Mr. Jones, who is the director of purchasing. In the early days he supervised my training and since 1955 the decisions have been largely mine.

Q. From what companies have you purchased dehydrated onion and garlic?

A. Gentry, Basic, Gilroy Foods, Standardized Products.

Q. During what periods of time did you purchase dehydrated onion or garlic from Standardized Products?

A. For perhaps a two or three-year period and I think we have had no purchases from Standardized Products for perhaps two or three years. Somewhere in '55, '56 or '57 I think we bought something from them.

Q. Where are they located?

A. In California.

1416 Q. Did they produce the dehydrated onion and garlic themselves or did they buy it from someone else?

A. I know directly of no production facility owned by Standardized Products. I suspect it was an imported item.

Q. You do not know, though?

A. Not directly, no, sir.

Q. During what period of time have you purchased dehydrated onion or garlic from Gilroy Foods?

A. This year only. It is a new company.

Q. Have you purchased both onion and garlic from them?

A. Yes, sir.

Q. Have you tested their product?

A. Yes, sir.

Q. Do you plan to continue buying their products?

A. If they maintain the quality of product they are now shipping, yes.

Q. Do you find their quality acceptable at the present time?

A. Yes.

Q. During what period of time have you purchased dehydrated onion and garlic from Gentry?

A. All the time of my employment with the R. T. French Company.

Q. During what period of time have you purchased dehydrated onion and garlic from Basic?

A. For the same period.

1417 Q. To your knowledge, which of these two companies, Gentry or Basic, did you purchase from first?

A. Basic. May I ask a question? When you say I purchased—

Q. I meant your company.

A. My company purchased first from Basic.

Q. When was this change made from Basic to Gentry? I withdraw that. When did you start purchasing from Gentry?

A. Starting about 1947.

Q. Do you know the circumstances surrounding the purchases from Gentry in that year, why they started purchasing from Gentry?

A. I think so.

Q. What were those circumstances?

A. We had, I am told, some kind of distributor arrangement with Basic Vegetable which was terminated in 1946 or 1947. On the termination of that agreement, we started doing business with Gentry.

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1418 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 137 for identification, was received in evidence.)

By Mr. Walker:

Q. Has the French Company purchased dehydrated onion and garlic from Basic in each of the years 1946 through 1958?

A. I think so.

Q. How far back do you have records which show your purchases of dehydrated onion and garlic?

A. Good records for really only since 1956.

Mr. Walker: Your Honor, Mr. Dubiel and the French Company prefers not to give specific data regarding its purchases of dehydrated onion and garlic from Basic and that is why I have not included that data and will not
1419 ask the witness for specific data on the specific amounts of his purchases from Basic.

Q. In 1950 approximately what percentage of your dehydrated onion and garlic did you buy from Gentry?

A. I said we had no specific figures that we could look at today. My recollection is that it would be in excess of 75 percent or perhaps higher.

Q. About what percentage of your dehydrated onion and garlic did you buy from Gentry in 1955?

A. Again, I would say in excess of 75 percent.

Q. Was the percentage share of your total purchases of dehydrated onion and garlic which went to Gentry roughly the same in the years 1950 through 1955?

A. Yes.

Q. Since 1955 has Gentry's share of your total purchases of dehydrated onion and garlic increased or decreased?

A. It has decreased.

Q. What is the approximate percentage of your total purchases of dehydrated onion and garlic that Gentry has at the present time?

A. Between 60 and 70 percent.

Q. Did the French Company broaden its product line in the years 1954 and 1955?

A. Yes, we did.

Q. What products did you add at that time?

1420 A. Spaghetti sauce mix, in which there is onion as an ingredient. We also brought out a new line of packaged onion for the retail trade. We have also expanded our distribution in the garlic and onion salts, which have had an increased use.

Q. What effect did that have on your requirements of dehydrated onion and garlic?

A. It increased the total required.

Q. When did you start increasing Basic's share of the dehydrated onion and garlic business?

A. In 1957.

Q. Why did you do that?

A. To broaden our supply base.

Q. Would you expand on that? Would you tell us what you mean by "broaden our supply base"?

A. Well, with our increased total need, we deemed it prudent to have more than one major source. I might add also that in 1955 and 1956 and 1957—I will say 1956 and 1957. Please delete the 1955. In those years there was a shortage of garlic powder and granules in the spring of those years. We did not get deliveries as we should like to have gotten them from Gentry and I think it probably prompted our looking around for an additional or more sources of supply.

Q. Is this policy of wishing to have more than one source of supply limited to the dehydrated onion and garlic or is it applied by you in relation to other products pur-

1421 chased by your company?

A. Generally speaking, we like to have more than one source of supply, yes, sir.

Q. Have you ever purchased any imported dehydrated onion?

A. No, sir.

Q. Have you ever tested the imported dehydrated onion?

A. Yes, we have.

Q. What is your opinion as to its quality?

A. It is not as good as the domestic product.

Q. Why did you test it?

A. It was attractive price-wise and it would be an additional source of supply, if they had the proper quality.

Q. Do you have any opinion as to whether the quality of the imported product has been improving in recent years?

Mr. Hays: Objection, your Honor; no basis for this.

Mr. Walker: The witness has testified that he has been a purchaser of dehydrated onion and garlic for some years and has tested the imported product and there is a basis for showing his opinion as to whether the tests show a better quality or not in recent years.

Hearing Examiner Kolb: If you can show he made additional tests, that is all right.

By Mr. Walker:

Q. Have you made more than one test?

A. Yes, we have.

1422 Q. During what period of time have you made those tests?

A. Over at least a three-year period.

Q. During that three-year period in which you have made tests, what is your opinion as to whether the quality of the imported product has been improving?

A. Will you repeat the question?

Mr. Walker: Please read the question.

(Question read.)

A. Of the samples we have seen, I think there is an improvement in the quality of the foreign products offered for sale in this market.

Q. Does the French Company have a laboratory?

A. Yes, we do, and we are very proud of it.

Q. What role does the laboratory play in connection with your sources of supply and the products that you buy?

A. They examine samples of materials offered for sale. They regularly check all deliveries, inbound, of materials.

Q. Do you buy any capsicums?

A. Yes.

Q. Which ones?

A. We buy paprika, we buy red peppers, sweet peppers, hot peppers, chili powder.

Q. From what companies do you buy those products?

A. We buy a little from Gentry, Chili Products Company, Cal-Compack, McClintock-Stern. Those are the
1423 California houses. We have the Young Company in the Carolinas. We buy peppers of Japanese origin, African origin. We buy paprika primarily from Spain through import houses and some direct connections.

Q. How much of your capsicum requirements do you buy from Gentry?

A. A relatively small percentage. I think our purchases of the pepper through Gentry is confined to chili pepper, no paprika, no pods.

Q. I have explained to the Hearing Examiner that we have talked to you about this case. Prior to the time that you were contacted about testifying in this matter, had you ever talked to anyone about a relationship of any kind between French's sales to Consolidated and its purchases of dehydrated onion, garlic or capsicums?

A. None that I recall.

1424 Q. Have you had any communication of any kind on this subject?

A. Again, none that I recall.

Q. What effect has the fact that Consolidated is a customer of the French Company had on the volume of your purchases of dehydrated onion and garlic and capsicums from Gentry?

A. None whatsoever.

Q. When did you learn that Consolidated was a cus-

tomer of the French Company, Mr. Dubiel?

A. Following Mr. Rothe's visit to our office about a month ago.

Mr. Walker: Your witness, Mr. Hays.

Cross Examination

By Mr. Hays:

Q. Mr. Dubiel, when were you the assistant to the main buyer of the French Company?

A. I was assistant to the purchasing agent from 1949 to 1952.

Q. During that period who was your supervisor?

A. Mr. T. D. Jones.

Q. During that period did he make a number of purchases that he did not consult you on?

A. That is a long time ago. It is my recollection that as we made these purchases, as part of my training, we worked the problem out together and said, "This is what we will buy," and where.

1425 Q. Do you mean that that occurred in every purchase during that period?

A. I can't say it occurred in every purchase, but I would guess that it occurred in most purchases. There could have been exceptions. It would be an exception, though.

Q. You indicated in your direct testimony that instant onion has been doing well. What were your sales of this instant onion product last year?

A. What were our sales?

Q. The amount, yes.

A. I am not informed specifically, sir.

Q. What was the amount of your sales in 1958 of this instant onion product?

A. Again, I am not informed about the sales figure of that specific item.

Q. What is the basis for your statement that it has been doing well?

A. We are purchasing additional quantities each year.

Q. You mean additional quantities of the dehydrated instant onion product?

A. No, of this particular onion, which is identified as instant minced onion. It is a separate product designation.

Q. What were your purchases of that product in 1959, the amount?

A. I can't give you a specific number. I do know
1426 it is larger than the preceding year.

Q. How much larger?

A. Well, it came up from nothing in either 1957 or 1958. I would guess that it will exceed 100,000 pounds this year.

Q. From whom did you purchase that product?

A. From Basic and Gentry.

Q. Approximately how much of that product did you purchase from Gentry?

A. I can answer by saying we have purchased more of it from Basic then we have from Gentry. I don't know the specific number, but it is more than half.

Mr. Walker: If it would be helpful to anyone, here is a sample of the minced onion product the witness is talking about.

(Bottle passed to the Hearing Examiner.)

Q. Did you or your company have anything to do with the development of this instant onion product?

A. No, sir.

Q. Which company approached you first as to buying it, Gentry or Basic?

A. Are you speaking of the minced onion?

Q. Yes.

A. I would say that both companies have approached us. I don't know which one was first.

Q. Since 1952 have you been in charge of purchases?

1427 A. Yes, subject to the supervision of Mr. Jones,

who is the director of purchasing.

Q. Has he been director of purchases from 1952 to the present time?

A. He was director about the time I was elected as purchasing agent.

Q. In 1952?

A. About that time.

Q. He has continued to be director of purchases for how long?

A. He still is the director.

Q. Does he make any purchases at all without informing you?

A. Yes—excuse me. He makes purchases, but he does inform me. There is an area in which he operates as a product specialist. I am informed of everything he does and I participate in the decisions, but he has the last word on those—first and last word, I should say.

Q. During the period from 1950 to 1959 do you know the names of the Gentry salesmen that called upon you?

A. Yes, sir.

Q. What were the names of those salesmen?

A. At one time it was Lloyd Bellisime, Dr. Prater, Gil [sic] Farrell and Oscar Schek.

Q. You indicated that your sales to Consolidated for the past several years have amounted to approximately
1428 $200,000 per year.

A. Yes, sir.

Q. To what years did you intend that figure to apply?

A. 1956, 1957, 1958.

Q. What were the approximate annual amounts of your sales to Consolidated for 1950 through 1955?

A. I have no idea, sir—less than $200,000.

Q. When did you make purchases of dehydrated onion or garlic from Gilroy Foods?

A. This year.

Q. How much, sir?

A. Prior to the 1st of August of this year, I have purchased about 70,000 pounds of products.

Q. That is 70,000 pounds of which products?

A. Garlic and onion.

Q. Why did you make that purchase when you already had two sources of supply?

A. Potential for a third good source.

Q. Do you ordinarily have three sources of supply for the various items that you purchase?

A. We have no practice that there must be three. We could have four or we could have two, but we try to have a good broad base, depending upon the importance of the item to us and the volume.

Q. In some instances do you have one source of supply?

1429 A. Yes.

Q. For what products?

A. We have an item called cuttlefish bone. It is the hard back of the cuttlefish. The bone is washed up on the shores of Morocco, Africa, and there is one guy in the world who specializes in getting that stuff to this country and he is our source of supply.

Q. Do you have one source of supply for any other product?

A. Yes, sir.

Q. What other product?

A. Millet spray. It looks most like the tassel on the top of corn. It is about so long (indicating) and it is a pod with a lot of little seeds on the top of it. We package that for bird seed.

Q. You have one source of supply for that?

A. Yes.

Q. That is not a monopoly too, is it?

A. Very nearly. The second fellow that tried to get into

the business is now bankrupt.

Q. It is now a monopoly?

A. It is a monopoly in this country. It can be bought in Spain and France. We have tried to buy it and it is not practical.

Q. Do you have one source of supply for any other of your purchases?

1430 A. Those two come most quickly to me. I would say we have one source of supply on other specialized items, yes.

Q. Are you considering broadening your base on those other specialized items?

A. We keep looking.

Q. Are they items in which there is only one source of supply?

A. For practical purposes, yes.

Q. What are these items?

A. The third one I think of is the parakeet bell. It is a moulded conglomerate of different seeds that a house in Detroit specializes in. They have molds and they have the know-how and a good price and we buy from them exclusively.

Q. Are there other sources of supply?

A. There is one in New York and his price is almost double the price we pay the fellow in Detroit. If he burned down or had a fire tomorrow, I would know where to run.

Q. Was the price on this dehydrated onion that you purchased from Gilroy Foods the same as the price of Basic and Gentry at the same time?

A. It was a competitive price.

Q. Was it the same price or a lesser price?

A. I would prefer not to answer that for competitive reasons. The price is confidential between us and the supplier. We don't tell Basic's price to Gentry and we

1431 don't tell Gilroy's prices to Basic. I would say it was a competitive price.

Q. I don't know what you mean by "competitive price."

A. It was in the same general area, if that will satisfy your question.

Q. Was the price one of the reasons that you made the purchase?

A. If it had been priced out of the market, we wouldn't have bought it. Conversely, I would say price was considered, as we did buy it.

Q. When did you make your purchase from Standardized Products?

A. The principal at Standardized Products is Lloyd Bellisime, or was at the time—it was some time after he left Gentry's employ. I think it was from three to six years ago.

Q. What did you purchase from that company?

A. I think it was garlic.

Q. Dehydrated garlic?

A. Yes, sir.

Q. When was your last purchase from that company?

A. Again, somewhere longer than three years ago, as best I can recall it.

Q. Why have you not used them as an additional source of supply in the last three years?

A. There was no indication that he was a solid source of supply. I said I was not aware of any facility he
1432 owned. I said he probably imported it and on that basis we wouldn't consider him a reliable source of supply, as compared to the other sources that were available.

Q. Will you describe the manner and extent in which the quality of the imported product that was tested by your company has improved?

A. The bacteria count is the prime consideration. We have, within the past year, found some material that would pass on the bacteria-count basis. The earlier material presented was too high to be even considered. Odor is a con-

sideration. The material being sampled from abroad today has a better odor than the material of some years back. We think it is related to the kind of raw material that is processed abroad and we think that the people in this country have a higher standard of quality than some of the foreign sources.

Q. Do the American processors have a better consistency of product that the foreign sources of supply?

A. Very much so. Within the past two years they have organized the onion and garlic association and they have a set of standards. When you buy from them you have a reasonable insurance that what you get will be uniform in quality.

Q. Is consistency of the product a consideration that is important to you in making your purchases?

A. Very much so.

Q. Of the foreign product tested, did you find that 1433 there was a consistency of product?

A. We found no consistency of product. You bought on a lot basis, or it was offered on a lot basis, with no assurance that there would be a second lot like the first one.

Mr. Hays: That's all I have, your Honor.

Mr. Walker: I have one question, your Honor.

Redirect Examination

By Mr. Walker:

Q. You testified on cross examination that Mr. Jones has the last word on the purchasing of some items. Is dehydrated onion or dehydrated garlic included in that group?

A. Well, he has the last word on the operation of the department, yes.

Q. But you make the purchasing decisions on those items; is that right?

A. Yes, sir.

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1434 ROBERT E. ROBINSON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. What is your name, please?

A. Robert E. Robinson.

Q. Your home address?

A. R.D. 1, Canajoharie, New York.

Q. What is your occupation?

A. Director of purchases for Beech-Nut Life Savers, Inc.

Q. Where is that company located?

A. Its main offices are located at Canajoharie.

Q. Where is your office? That is where your office is?

A. Yes.

Q. How long have you been director of purchases?

A. Since October of 1959.

1435 Q. What was your position with the company prior to that time?

A. Prior to October 1959 I was assistant director of purchases.

Q. For what company?

A. For Beech-Nut Life Savers, Inc.

Q. During what period of time did you hold that position?

A. From 1956 until 1959.

Q. What position did you hold prior to 1956?

A. I was director of agricultural purchasing for Beech-Nut Packing Company.

Q. What is the interrelation of Beech-Nut Packing Company and Beech-Nut Life Savers, Incorporated?

A. In 1956 Beech-Nut Packing Company and Life Savers, Incorporated were merged and became Beech-Nut Life Savers, Incorporated.

Q. How long were you with Beech-Nut Packing Company?

A. I started with Beech-Nut Packing Company in 1938.

Q. During what period of time were you agricultural purchasing director for Beech-Nut Packing Company?

A. From approximately 1953 to 1956.

Q. What was your position prior to 1953?

A. I have been in the agricultural purchasing department.

Q. In what capacity?

A. As an assistant or as a buyer, whichever nomenclature best fits—actually doing purchasing work.

1436 Q. In what area?

A. In the area of raw material supplies for our baby food operation.

Over the past ten years, in what business has Beech-Nut been engaged? I mean Beech-Nut Packing Company prior to the merger in 1956 and the combined corporation since the merger.

A. In the last ten years Beech-Nut Packing Company has produced and sold coffee, peanut butter, baby foods and gum. Life Savers produced candy and cough drops.

Q. When the two combined, what products did they produce? The same ones?

A. The same ones, with the exception of peanut butter, which was discontinued, I believe, in 1957 or possibly 1958.

Q. When did you first become aware that your corporation was a supplier to Consolidated Foods Corporation?

A. When our company was contacted in connection with this hearing.

Q. About how long ago was that?

A. Approximately six weeks, I believe.

Q. Since you were contacted by us, since your company was contacted by us, have you, at our request, obtained some

information on Beech-Nut's sales to Consolidated Foods Corporation?

A. Yes.

Q. In the year 1958 approximately what were
1437 Beech-Nut's sales to Consolidated Foods Corporation?

A. That was approximately $250,000.

Q. In the same year, 1958, what were Beech-Nut's total sales to all customers, approximately?

A. Approximately $100 million.

Q. From the knowledge you have acquired of Beech-Nut's sales to Consolidated since our contact of your company, what has been the general trend of Beech-Nut's sales to Consolidated prior to 1958?

A. Generally, they have increased.

Q. Over the years prior to 1958?

A. Over the years prior to 1958.

Q. What has been the general trend of Beech-Nut's total sales during the years prior to 1958?

A. There has been a general increase.

Q. Over the years?

A. Over the years.

Q. In which products has Beech-Nut used dehydrated onion or garlic or capsicums?

A. Garlic, to the best of my knowledge, has not been used in any of our products. Capsicums have been used very nominally, in very, very small quantities. Dehydrated onions are used, however, in our baby food items.

Q. I am not sure that this has much to do with the case, but why do you use onions in baby food?

1438 A. Onions are used in baby food for flavor, of course, and it is intended that it will remove some of this blandness from relatively low seasoned food items.

Q. For what purpose do you want to remove the blandness?

A. For the baby's mother.

Q. Since about 1950 what role have you played in making Beech-Nut's decisions as to its sources of supply for dehydrated onion?

A. I have participated in those decisions.

Q. In what capacity?

A. That question again, sir?

Q. In what capacity have you participated?

A. During the early years of that period I had direct contact and direct purchase responsibility for the dehydrated onion products.

Q. During what years are we talking about now, roughly?

A. May I ask the year that you—the start of the period of which you are speaking?

Q. Since 1950.

A. Then it would be in the years of 1950, 1951 and, I believe, 1952 that I was directly responsible for those purchases.

Q. Since 1952 what role have you played in purchasing decisions as far as onion is concerned?

A. I have not had direct purchase responsibility
1439 but I have had the over-all responsibility—strike that, please.

I have played a part in making these decisions, although I have not had direct supplier relationship.

Q. Who has had that direct supplier relationship?

A. Subsequent to the years when I was directly responsible, Mr. A. J. Howlett, who is in charge of our agricultural department in California. He made the direct purchase, but purchases were not made without my approval.

Q. Mr. Howlett had no authority to make purchases of onion without your approval?

A. He could purchase very nominal amounts, in the area of 2 or 3 hundred pounds, which would be considered as fill-in purchases. However, even with those small quantities, once the purchase had been made, I was informed of it.

Q. You were then in a supervisory capacity over Mr. Howlett?

A. That's true.

Q. If Mr. Howlett had wanted to purchase more than a few hundred pounds of onion, what would he had had to have done during this period?

A. He would have had to secure my approval.

Q. By what process does Beech-Nut, and has it over the years, say, 1950 to 1960, arrived at its purchasing decision as to sources of supply for onion?

A. Specifications for the dehydrated onion product are prepared by our laboratory These are the bases for ac-
1440 ceptance of a product for use by the company. Our production planning department projects and provides the purchase department with the quantities required to meet production department demands. Once these specifications are available and once the quantities are known, the purchasing department negotiates the purchase.

The specifications call for, among other things, standards for odor, flavor, color, freedom from chemical or bacterial contamination or other foreign material. They also would specify the container, the size of the container, and the labelling necessary. Providing service, quality and prices are comparable, we would be influenced in our purchase or selection of supply by those factors which would assure a continuity of supply.

Q. What do you mean by "continuity of supply"?

A. Continuity of supply means a continuing flow of the raw material to meet our production requirements when they are needed.

Q. What factors make for continuity of supply? What do you consider when looking for continuity of supply?

A. We consider that we need more than one source because at times it is possible that one supplier may not be able to ship at the time the raw material is required. In

that event, with a secondary or additional source of supply, the raw materials needed may be provided by that secondary source.

1441 Q. Is this generally company policy?

A. That is generally company policy.

Q. Specifically, has that policy operated in the onion purchasing decisions?

A. Yes, it has.

Q. Are you permitted to buy anything which is not approved by your laboratory from any supplier?

A. No, we are not.

* * *

1442 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 138 for identification, was received in evidence.)

By Mr. Rothe:

Q. Looking at Respondent's Exhibit 138 it appears that through the years, generally speaking, Basic has been your primary and major source of supply for dehydrated onion. Will you tell us why that is, please?

A. Although it is desirable to have two sources of supply, as I have stated, in the years 1947 and 1948 we were experiencing difficulty with the quality of onions from Gentry.

Q. What kind of difficulty?

1443 A. This difficulty took the form of contamination of the dehydrated onions by wood splinters. Although we experienced some difficulty with Basic, the degree was much less than with Gentry.

Q. During what years are you talking about now?

A. This spanned the period after 1947 and 1948 and prior to 1954.

Q. What happened in 1954?

A. In 1954 we understood that the source of the wood splinters in the Gentry product had been removed.

Q. How?

A. The "source" meaning in their manufacturing processes and this we understood to have been accomplished by removing the wood trays on which dehydrated onions had previously been dried.

Q. How did you get this information?

A. I believe this information was provided Mr. Howlett of our California office.

Q. By whom?

A. By Gentry.

Q. What did you do when you received this information?

A. Mr. Howlett was asked to determine by a visit to the Gentry plant at Gilroy whether or not the new production facilities would be such that we could reasonably expect that wood splinters would not thereafter appear in 1444 the Gentry dehydrated onion product.

Q. What was the result of his activity?

A. As a result of his visit to the plant, we did make a purchase of onions from Gentry and, upon his recommendation, after having determined the probability for contamination by wood splinters had been removed—

Q. Prior to the time of Mr. Howlett's visit to Gilroy in 1954, had you been testing Gentry material over the years since 1948?

A. To the best of my knowledge, we had examined the material from time to time during that period.

Q. What did you find?

A. I can't specifically recall.

Q. Do you recall that the Gentry quality, so far as wood splinters was concerned, was still a problem during those years?

A. I don't recall that. I assume that it was.

Q. In any event, you made no purchases from Gentry during those years?

A. We didn't make purchases during that period.

Q. What was the result of your tests of Gentry's material in 1954?

A. I don't specifically recall the results of those tests, but we did purchase from Gentry in subsequent years.

Q. In which years are you talking about now?

1445 A. We again purchased in 1956 and 1957.

Q. Did you make any purchases from Gentry in 1955?

A. Not to my knowledge.

Q. Since what time have you considered Gentry an acceptable source of supply, in terms of quality?

A. Certainly since 1956.

Q. Have you purchased anything from Gentry in the year 1958?

A. I can't specifically recall, but I believe we have purchased in 1958.

Q. How about 1959?

A. We definitely purchased in 1959.

Q. Do you still purchase from Basic?

A. Yes, we do.

Q. At the present time which of the two companies is considered your prime source of supply?

A. I can only answer that by saying that we purchase a greater volume of dehydrated onions annually from Basic than we do from Gentry.

Q. Have you ever used fresh onions?

A. Yes.

Q. During what period of time?

A. Fresh onions were last used in 1956.

Q. What factors determined whether or not fresh onion would be used prior to that time?

A. I don't know that I can answer that without

1446 some clarification of your question.

Q. Go head, sir. Do you want me to clarify it?

A. I will explain it. During the period in which we

started to use dehydrated onions—that was a period of transition, since we had previously used all fresh onions. The purchases of dehydrated onions were made on the basis that they would not, in the early years, take care of our full requirements since at certain times of the year fresh onions were cheaper to put into the finished product than the dehydrated material and, so, as the years progressed, from the time we started to use dehydrated onions, we did use at certain times, because of the price factor, fresh onions, or because we may not have had a full supply of dehydrated onions on hand and the fresh onions were more readily available at a given time.

Q. We have explained to the Hearing Examiner that we have contacted you and your company about testifying in this case. Prior to that time, prior to the time of that contact, had you had any conversation—had you talked to anyone about any kind of relationship between Beech-Nut's sales to Consolidated and its purchases of dehydrated onion?

A. No, sir.

Q. Did you have any kind of communication on that subject?

A. No, sir.

Q. What effect has the fact that Beech-Nut sells to Consolidated Foods Corporation had on such pur-
1447 chases of onion as it has made from Gentry over the years?

A. None.

• • •

1448 *Cross Examination*

By Mr. Hays:

Q. Mr. Robinson, in 1953 did your company use any fresh onions?

A. I don't recall specifically whether we used fresh onions in 1953.

Q. Will you describe the extent, during the period from 1946 through the present, that you used fresh onions in your products?

A. I cannot specifically state in any year, or in total, the amount of fresh onions that would have been used in this period. The only thing that I can say is that we were in a period of transition. We had previously used fresh onions and were gradually working into the dehydrated onions in our baby food products, but further than that, I can't say.

Q. What were the reasons for that transition from fresh onions to dehydrated onions?

A. During certain periods of the year, in any year, there are times when we knew that dehydrated onions were cheaper than were fresh onions, as we also knew and found out that in a certain period of certain years fresh onions might be cheaper than dehydrated. There is also the convenience factor on dehydrated onions: they were compact and used little storage space and were not perishable 1449 and you could have them available for production changes which do occur where you are producing several lines of baby foods and where you may wish to move from one item to another item rapidly and dehydrated onions were convenient for that reason.

Q. Has your change over to dehydrated onions been completed?

A. Since March of 1956 we have purchased no fresh onions for use in baby foods.

Q. During this period from 1946 to 1958, did you purchase dehydrated onion from any companies other than Gentry or Basic?

A. In 1956 we purchased some from the J. R. Simplot Company.

Q. Is that the extent of your purchases from other companies during this period?

A. To the best of my knowledge, sir, that is.

Q. How do you account for the fact that in 1953 your company used approximately 109,000 pounds of dehydrated onion and in 1954 used only approximately 11,500 pounds?

A. It is certainly apparent that our production planning department was overly optimistic so far as providing requirements for the 1953 purchase program.

Q. In other words, you were overstocked in 1953?

A. From the 1953 purchases, we were definitely overstocked.

Q. You were overstocked in the finished product?

A. That I could not answer, but we were overstocked on dehydrated onions.

1450 Q. In 1954, when you tested Gentry's onion product, did you also test Basic's onion product in that year?

A. That I cannot specifically answer, but I would presume so, since we, during 1954—during 1954 the invoice records show that we actually purchased from Basic.

Q. Do you remember the specific test of the Gentry product?

A. No, I do not remember the specific tests on either one.

Q. What was the extent of your purchases from Gentry in 1959?

A. In 1959 I believe we purchased 25,000 pounds.

Q. What was the extent of your purchases of dehydrated onion from Basic in 1959?

A. I believe approximately 100,000 or 105,000—that Basic figure I believe was 105,000 and I believe Gentry was 20,000—20,000 or 25,000. I don't recall exactly.

Q. Will you tell us what specific positions Mr. Howlett held during—

A. Yes. Mr. Howlett, for a certain time, was the head of our agricultural purchasing department at our San Jose

plant or our San Jose office. We have a plant there that produces baby food and we have a purchasing office and he was head of that office.

Q. When was that?

A. This was in the years directly following the time when I had direct responsibility for the purchase of
1451 the dehydrated onions—that is, when he took over direct responsibility but had to get any approval before he could make commitments. I don't recall the exact years offhand.

Q. What was his position in 1954?

A. In 1954 he was still head of the agricultural department at our San Jose plant.

Q. Who has contacted you attempting to sell you Gentry onions?

A. Over the years?

Q. Yes, sir.

A. Since it has been some years since I had direct contact with Gentry, the ones I recall are Mr. Joe Farrell and I have met and talked with Dr. Prater on occasion.

Q. And when was that?

A. The exact time I don't recollect.

Q. Can you give us the approximate period when that contact occurred, or those contacts occurred?

A. I would say in 1950 or 1951, along in that period.

Q. Mr. Howlett was purchasing the dehydrated onion in 1954?

A. He had a direct responsibility in purchasing onions at that time, yes.

Q. Who was responsible for the purchases of dehydrated onion in 1956 and 1957?

A. Mr. Howlett was directly connected in 1956 and in 1957—there was a change at that time, when we
1452 brought Mr. Howlett east, and I am not sure whether he was directly connected in 1957 or whether it was

his successor at the agricultural office in San Jose.

Q. What is the name of his successor?

A. R. R. Gault.

Q. How long has Mr. Gault held that position?

A. He still has the title of manager of the San Jose agricultural department.

Q. In 1954 who was your immediate superior?

A. There were several changes at that time, but to the best of my memory, it was Mr. Frank L. Farrell.

Q. Did he have anything to do with purchases?

A. I believe it was at that time that Mr. Farrell had the responsibility for the over-all purchases of Beech-Nut Packing Company.

Q. You now have that over-all responsibility?

A. I am director of purchases for Beech-Nut Life Savers, Inc.

Q. Is your responsibility equal to the responsibility formerly held by Mr. Farrell?

A. In effect, I would say that is true.

Q. Since 1951 have you found that the Gentry product has improved in quality?

A. Unfortunately, I can't recall what our—whether or not our sampling encompassed the years 1951 and 1952
1453 for Gentry. I can only say this, that the difference between the dehydrated onions from Gentry, as we were supplied in 1947 and 1958, and those which we have received in recent years—the product quality is definitely improved.

Q. Did you call at the Gentry plant in 1954?

A. Pardon?

Q. Did you call at the Gentry plant in 1954?

A. To the best of my knowledge, I did not personally do so. I believe Mr. Howlett did.

Q. In 1953 did you have a secondary source of supply for dehydrated onion?

A. Not to my knowledge.

Q. How do you account for the apparent difference in purchasing theory or philosophy when, in 1953, you purchased approximately 109,000 pounds, with no secondary source of supply, and in 1957 you purchased approximately 91,000 pounds with a secondary source of supply?

Mr. Rothe: I object to Mr. Hays' characterizing it as a change or conflict in purchasing philosophy. I don't believe the figures show that at all.

Mr. Hays: I believe I called it an apparent—

Hearing Examiner Kolb: The witness may answer the question.

A. I don't know that there is a difference or that there is even an apparent difference, but apparently it was
1454 considered that the Basic onions were acceptable from a quality standpoint in 1953 and it is apparent, although I cannot vouch for it, that at that time it was still believed that Gentry was not satisfactory from a quality standpoint. Assuming, therefore, that our requirements actually were 109,000 pounds and that we had but one source of supply which was available to us that could provide us with the proper quality, then there was no alternative but to purchase from the one source that could supply adequate quality.

Q. In 1955 you purchased approximately 96,000 pounds from Basic and you purchased nothing from Gentry and that is the year which follows the 10,000-pound purchase from Gentry.

Why did you not employ Gentry as a secondary source in 1955?

A. I cannot definitely say, but I can only offer this as a possibility, because my memory does not serve me that well. With that sizeable purchase in 1953 and the resultant inventory levels that were higher than normal, it is probable that we were still well stocked but were testing yet in

1955 the onions that were supplied by Gentry—in other words, this was a resumption of purchases from Gentry in 1954 where product quality hadn't been satisfactory over a period of years and I presume our production department was still looking at this, examining it and testing it in various products to make sure that everything
1455 was satisfactory before we resumed purchases and it would appear that we had lots of dehydrated onions from 1954 from that previous year's purchase.

Q. But you did purchase 96,000 pounds in 1955, didn't you?

A. Yes, but what I am saying here is that it is possible that with that stock of Basic onions purchased in 1953 that our production department was using that and didn't get to the testing of the purchase of the 10,000 pounds of Gentry early enough in 1954—they were still using the older product produced by Basic, you see. It is possible they did not get to the actual production testing of the 1954 Gentry onions until 1955, which could make it too late to make a purchase in 1955 without this full knowledge of how it was handled or used; whether it was up to standards.

Q. In other words, it is your assumption—you do not know for a fact?

A. I do not know for a fact.

Q. It is your assumption that the 10,000 pounds of Gentry material which was purchased in 1954 was not used until after you had purchased approximately 96,000 pounds from Basic in 1955—

A. I think that is a possibility, yes.

Q. In other words, under that hypothesis, am I correct in my calculation that this 10,000 pounds of material purchased from Gentry remained in your warehouse or in your factory for approximately one year before it was used?
1456 A. Certainly I can't answer that because part of it may have been used in three months and more used

later. I certainly have no knowledge of when it was used or how much of it was used in two months or twelve months or fourteen months, as far as that is concerned.

Q. How long does your factory normally store dehydrated onion and garlic that it purchases before it uses it?

A. Our objective is that we would purchase in a given year a sufficient quantity to cover our production requirements until a new crop is available and that is approximately one year, although the commitment may be made ahead of the actual harvest season of the onions that will be produced into dehydrated onions. That commitment may be made, for example, in June of a given year and the dehydrated onions may not be available until September or October of that year, which means that our production requirements then have to be covered from October until October and they may be covered three or four months ahead of that October date.

Q. Don't your production schedules normally vary during the year with certain periods for peak production and certain periods when there is little or no production?

A. We attempt to reduce the fluctuations in over-all baby food production as much as possible throughout any given year. This does involve, then, changes of individual baby food items that are being produced at any given day. Certain seasonal items are produced when they are at their peak of supply. This is particularly true of those which are perishable, the fresh fruits and fresh vegetables. They are packed in season. The other items which are not perishable and which we can store, are used to fill in those periods when you do not have perishable crops that have to be packed.

1457

Q. Have you reached a point now where there is practically no variance in your production throughout the year?

A. I wouldn't say so.

Q. There are still production peaks and depressions?

A. To a certain extent, yes.

Q. Has your company considered the use of oil of onion as a substitute for the dehydrated onion?

A. To the best of my personal knowledge, no.

Q. Do I recall your testimony correctly in that you testified in 1958 you sold approximately $250,000 worth of products to Consolidated Foods?

A. I believe that is approximately correct, yes.

Q. What were your approximate sales for each of the years preceding that and back until 1950 to Consolidated?

A. Specifically, I can't answer that question. I am not well enough versed in sales.

Q. You don't know enough about the sales to give me an approximate figure?

A. I can only say that for the period, generally, 1458 the sales did increase, but specifically, I do not have that information.

Q. I believe you testified on direct that up until the time that you were contacted several weeks ago you did not know that Consolidated Foods had purchased the Gentry Company?

A. I don't think that I testified to that, sir.

Q. When did you first know that Consolidated Foods had purchased Gentry?

A. I don't know. I don't recall.

Q. You do not recall when?

A. That's correct. Would you state that again?

Mr. Hays: Please read it back.

(Question read.)

Mr. Hays: I will rephrase that.

Q. When was the first time that you learned, if you ever did, of a corporate relationship or an ownership by Consolidated Foods of Gentry?

A. I don't recall when I first learned of that.

Q. For how many years have you known it? Did you know it in 1956?

A. I don't know. I don't recall whether I knew it in 1956 or whether I didn't.

Q. Isn't reliability and financial standing one of the factors which you consider in selecting a supplier?

1459 A. They are factors that are considered, among many others.

Q. Two of the factors?

A. They are two of the factors, yes.

Q. Don't you attempt to determine, in the course of the selection of your suppliers, the ownership of the supplier or its relationship with other corporations?

A. Ordinarily, before the first purchase is made, the initial purchase from the supplier, the reliability of that supplier and its historical background are checked out. So long as the performance of that supplier is proper, then we might or might not attempt to re-evaluate his financial reliability or other reliability.

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Redirect Examination

By Mr. Rothe:

Q. During the period 1949 and through 1953 and on into 1954 were you personally interested in developing a second source of supply for dehydrated onion?

A. Yes.

Q. For the reasons you have already stated?

A. That's correct.

1460 Q. Any others?

A. No, sir.

Q. Did you know of any other producer of dehydrated onion to whom you could turn as a second source of supply than Gentry?

A. No, sir.

Q. You mentioned that Mr. Franklin Farrell at one time was in charge, generally, of all purchases for the corporation?

A. Yes.

Q. What was your particular function in purchasing during the time that Mr. Farrell was your superior?

A. I had charge of the agricultural purchasing.

Q. Did Mr. Franklin Farrell have any direct responsibility in the purchasing of onions during that period?

A. No, sir. He was my superior.

1461 Q. During that period of time who was it who, for all practical purposes, made the decision as to the source of supply on dehydrated onion?

A. That was me.

Q. You were the person who made the decision?

A. Basically, that's true.

Q. Your decisions were subject to review by Mr. Farrell and perhaps others, were they not?

A. That's correct.

Q. Was any decision that you ever made concerning the purchase program for dehydrated onion overruled by any of your superiors?

A. Not to my knowledge, no.

Q. Did any of your superiors at any time tell you where to buy your onion?

A. No.

Q. Did those superiors suggest where to buy onion?

A. No.

Q. The decision was yours?

A. That's correct.

Q. When your company takes on a new source of supply for a raw material ingredient, you have already testified that there is a prior laboratory approval required, is that correct?

A. Of the raw material?

Q. Yes, sir.

1462 A. Yes. The laboratory has—that is their function.

Q. Before a new supplier is taken on—

A. To be sure that the pre-purchase samples are satisfactory as far as company specifications are concerned.

Q. When you take on a new source of supply for a raw material ingredient and it has been approved for quality by the laboratory and it is decided to make or place an order for a quantity to be worked into production, how is that material worked into production?

A. Generally very slowly and carefully with checks, analyses, evaluation of the finished product produced from that material before any large quantities are finally committed for.

Q. What kind of tests are performed on the finished product and over what period of time?

A. I am not familiar with all of the tests that the laboratory makes on all of our various baby food products but I am sure there are different tests made on different ones. If we were examining for the presence of a material of which we had prior knowledge, the sampling and the evaluation of those samples for the presence of that foreign material would be very extensive and there would be repeat trial production over a period of time made until the laboratory, upon examination of the finished product, was satisfied that the baby food produced was up to the standards which they set.

(The document referred to was marked Respond-
1463 ent's Exhibit 139 for identification.)

By Mr. Rothe:

Q. Here is a document which has been marked for identification as Respondent's Exhibit 139. Will you please read it?

A. I will. Do you want me to describe this?

Q. First read it for your own edification and then I will ask you some questions about it.

Mr. Robinson, this is what purports to be a call report by a Gentry salesman named Clausen on Mr. Howlett at the San Jose plant of Beech-Nut Packing Company on February 26, 1954. I direct your attention specifically to the second paragraph of the call report where it states, "Howlett mentioned that Mr. Robinson of their eastern plant was most anxious to split the business between Basic and Gentry if we can do something to help eliminate the wood problem."

Does this statement in this call report refresh your recollection as to the problem you were having with Gentry material at the time?

A. The wood splinter problem, as a contaminate of the dehydrated onions from Gentry, was of real importance.

Q. Directing your attention to the second sentence in the second paragraph: "Mr. Howlett has mentioned that he would be very happy to go to Gilroy at any time to see any changes that were forthcoming in our plant operation in order to eliminate this wood problem and would, in
1464 turn, recommend to the eastern plant that at least a good share of orders are given to Gentry." Do you remember any such recommendation by Mr. Howlett?

A. I don't remember specifically that he made a recommendation at that time. It is entirely possible because he worked on this product — he spent considerable time in connection with the dehydrated onions and I do know that some time in that period or around that time Mr. Howlett did go to Gilroy to see the Gentry plant and he had been there at various intervals during the period prior to that.

(The document referred to was marked Respondent's Exhibit 140 for identification.)

Q. Here is what has been marked for identification as Respondent's Exhibit 140. Will you please read that?

A. Yes.

Q. Have you read that?

A. Yes.

Q. Can you identify this document for us?

A. I recognize the initial of A. J. Howlett.

Q. What is the document?

A. It is a letter written by Mr. Howlett on September 21, 1955 to the Gentry Company, Los Angeles, attention of Mr. George E. Clausen, Jr.

Q. That is Mr. Howlett of your San Jose plant?

A. That's correct.

1465 Q. Did you normally receive copies of correspondence of this nature in Canajoharie?

A. Yes, we would ordinarily have received copies of that correspondence.

Q. Do you remember receiving a copy of this particular document?

A. No, I do not.

Q. The letter reads as follows: "Dear Mr. Clausen:

"We have received word from our eastern office regarding the 12,000 pounds of ground onions per our purchase order number 302S dated June 14, 1955. They would like to have you hold this product as long as possible as they won't need it before the first of the year. We will give you shipping instructions late November or early December."

Does this refresh your recollection as to the circumstances under which onions were ordered from Gentry in 1955 or 1956?

A. I didn't get that question.

Q. Does this document refresh your recollection as to whether or not Beech-Nut placed with Gentry an order for onions in 1955?

A. I would say that we must have, since this refers specifically to an order dated June 14, 1955.

Q. A Beech-Nut purchase order?

A. That's correct.

Q. And it refers to holding shipment until the end
1466 of the year. Does that refresh your recollection as to whether the onion ordered in 1955 was received?

A. It probably would not have been received until 1956, therefore.

Mr. Rothe: I would like to offer into evidence Respondent's Exhibit 140.

Hearing Examiner Kolb: Are you offering 139?

Mr. Rothe: No, your Honor, not at this time.

Hearing Examiner Kolb: Any objection?

Mr. Hays: No, sir.

Hearing Examiner Kolb: That is received as Respondent's Exhibit No. 140.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 140 for identification, was received in evidence.)

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Recross Examination

By Mr. Hays:

Q. I take it, Mr. Robinson, that the 11,000 pound figure for 1956 on Respondent's Exhibit 138 was actually purchased in 1955; is that correct?

1467 A. It is entirely possible that that is true. These figures on Basic were supplied on invoice dates—

Q. I mean on the Gentry figure.

A. I would say that is a possibility, yes.

Q. On the basis of what was read to you, isn't that what happened?

A. I would assume that it was, but I don't have specific knowledge that this 11,000 pounds showing as 1956 were actually those supplied on the purchase order which was referred to in that letter.

Q. There was only one purchase, wasn't there?

A. As far as I know, that's true.

Q. Then it was either ordered in 1955 and delivered in 1956 or else nothing was purchased in 1955; is that correct?

A. That sounds reasonable.

Q. That is the only possible explanation that occurs to me. Does another one occur to you?

A. No.

Mr. Hays: With reference to this 1954 figure, I can ask Mr. Walker if this 10,000 pounds reflected for 1954 was that which was actually purchased in 1953?

Mr. Walker: The 10,000 pounds in 1954 purchased in 1953?

Mr. Hays: Yes.

Mr. Walker: Where is there any indication of that?

1468 Mr. Hays: I am asking you that now. I would ask that you check that.

Mr. Walker: Let us check that now.

I don't believe so, Mr. Hays. I have here a statement on November 11, 1954, "Recently inspected new P&S unit at Gilroy. Very impressed. Trial order has been placed in the east." This is in November of 1954, so that sounds as though that trial order was placed at about that time and certainly not a year earlier.

Mr. Hays: That's all I have, your Honor.

Mr. Walker: Your Honor, we are going to have to make a correction on Respondent's Exhibit 138. When we first looked at this and saw at the bottom "Source of data: Beech-Nut Life Savers, Inc. records" we knew that we had made a general decision to use the SBC data throughout for the Gentry people, but we checked our file here and we now find that this data for the Gentry figures doesn't come from the Service Bureau tabulation. This is apparently the exception that proves the rule and it comes from the records

of Beech-Nut Life Savers, Inc., so that all data on this particular exhibit comes from Beech-Nut Life Savers records.

Hearing Examiner Kolb: As stated on the exhibit?

Mr. Walker: Yes.

May we strike the correction that was made?

Hearing Examiner Kolb: Yes.

* * *

1469 By Mr. Hays:

Q. The figures with reference to Gentry purchases would be taken from which of your records?

A. If these figures are those supplied by our accounting department, and presumably they are, they would be taken from invoices, not purchase orders—taken from actual invoices.

Q. And the date on that invoice would be the shipping date; is that right?

A. That is normal.

* * *

1470 KARL F. SCHAEFF was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. What is your full name?

A. Karl F. Schaeff.

Q. Your address?

A. 78 Greeley Avenue, Sayville, New York.

Q. What is your occupation?

A. I am controller of Bluepoints Company, Inc.

Q. What are your duties as controller for Bluepoints?

A. I am in charge of account—doing the accounting myself, in fact. I am in charge of sales, in charge of the office that we have. I am in charge of credits and I do some purchasing.

Q. How long have you performed these duties?

A. All of these duties—all of the duties except sales since August of 1954.

Q. And sales since?

A. Sales since February of 1956.

Q. What duties did you have prior to August of 1954?

A. I was in charge of accounting in charge of the office and did some purchasing.

Q. For how long a period of ti e did you have those duties?

1471 A. Approximately 1936.

Q. Since 1936, approximately?

A. Yes.

Q. Where is the Bluepoints Company located?

A. The foot of Atlantic Avenue in West Sayville, Long Island, New York.

Q. Is Bluepoints at the present time affiliated with any other corporation?

A. No, they are not.

Q. Has Bluepoints been affiliated with any other corporation at any time in the past?

A. Yes.

Q. What corporation was it affiliated with?

A. General Foods Corporation.

Q. During what period of time?

A. 1929 to 1953.

Q. What happened in 1953?

A. General Foods sold the corporation to some of its former employees.

Q. And it has been operated as a distinct corporation since that time?

A. That's correct.

Q. In what business is Bluepoints presently engaged?

A. Shell fish farming, cultivation, production and sales.

Q. By "shell fish," you mean what?

1472 A. Clams and oysters, principally.

Q. How long has it been in that business?

A. Do you mean the present corporation since 1953?

Q. No. How long has Bluepoints, under whatever corporate affiliation, been engaged in the shell fish business?

A. About 1908.

Q. Has it had any other products during its history?

A. Canned clam products.

Q. During what period of time were clam products canned?

A. Approximately 1941 to February of 1956.

Q. What products are we talking about during that period?

A. The canned minced clams and clam chowder.

Q. During what period of time did you can clam chowder?

A. At our West Sayville plant we started about August of 1951.

Q. And the canning of clam chowder lasted how long?

A. To February 1st of 1956.

Q. What happened to your canning of clam chowder in 1956?

A. Our entire clam canning operation was sold to Doxsee and Company.

Q. You have canned no clam chowder since 1956, February?

A. That's correct.

Q. And you canned clam chowder only beginning in August 1951?

A. Right.

1473 Q. During the period of time when you canned clam chowder and minced clams, to whom were those products sold?

A. Customers throughout the country, such as chain wholesalers, retail chains and a few independents too.

Q. Through what channels did you sell your products? I am referring to canned clam chowder and minced clams.

A. Through brokers.

Q. Food brokers?

A. Yes.

Q. Under whose labels did you sell the canned clam products?

A. Under the 40 Fathom label, under our Bluepoints label and under a private brand label.

Q. Under the private labels of some of your customers?

A. Right.

Q. During what period of time has Bluepoints sold any products to Consolidated Foods Products or any of its divisions or subsidiaries?

A. I am not sure when we first started, whether it was in 1951, but surely from 1953 up to February 1, 1956.

Q. About how long before 1953 had you been selling either minced clams or clam chowder to Consolidated?

A. It couldn't be before August of 1951.

Q. Why?

A. Prior to 1951 the sales of all the clam products were handled by the 40 Fathom division of General Foods
1474 Corporation. We had the production and they had the sales.

Q. But you didn't produce clam chowder before 1951?

A. We didn't produce clam chowder prior to 1951.

Q. You did produce minced clams?

A. Yes.

Q. The minced clams you did produce were sold by 40 Fathoms?

A. That's right.

Q. When you sold minced clams and clam chowder to Consolidated, under whose label were those products sold?

A. To the best of my knowledge, they bought some

under our own label and I know they bought some under their label—under their various labels.

Q. During that period of time, the period of time you sold to Consolidated, about how large annually was the volume of your sales to Consolidated?

A. Dollar sales?

Q. Dollar sales.

A. Approximately $20,000 a year.

Q. During that same period of time, about how large were Bluepoints' total sales both as a division of General Foods and then as a separate corporation?

A. A million and a half.

Q. Per year?

A. Per year.

1475 Q. In which of the products which have been made by Bluepoints, disregarding the corporate change, have you used dehydrated onion or garlic or capsicums?

A. In the clam chowder.

Q. What was it you used in the clam chowder? Was it onion or garlic or capsicums?

A. Dehydrated onions.

Q. Have you ever used any garlic?

A. No.

Q. Any capsicums?

A. No.

Q. During the period of time that Bluepoints canned clam chowder, who did the onion buying?

A. I did.

Q. During all of the period from 1951 to 1956 when you canned clam chowder?

A. Let me explain it this way: during part of that time we signed a purchase contract and once that was signed, anyone in our office, such as the production manager, could draw on that purchase order, but I took care of the purchase of the contract itself.

Q. So that you made the decision as to who would be the source of supply?

A. That's right.

Q. From whom during this period, 1951 to 1956,
1476 was dehydrated onion purchased?

A. From Gentry and Basic.

Q. Anyone else?

A. No.

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(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 141 for identification, was received in evidence.)

By Mr. Rothe:

1477 Q. You didn't purchase any dehydrated onion prior to 1951?

A. That's correct.

Q. Because you were not canning clam chowder?

A. That's right.

Q. Looking at Respondent's Exhibit 141, why did you buy onion only from Basic in 1951, the year in which you started to can clam chowder?

A. The clam chowder formula that we used was given to us by the 40 Fathoms Division of General Foods Corporation. At the time we got the formula they also gave us a list of suppliers and being unfamiliar with the product up to that time, we simply used the list they gave us to buy our requirements.

Q. Unfamiliar with what product?

A. With all the ingredients, outside of the clams. We didn't know anything about sliced onion, we didn't know anything about glutinate, pepper, cream, flour, salt.

Q. So you used the list they had given you of their suppliers?

A. Yes.

Q. Where had clam chowder been canned before the operation was transferred to your plant in West Sayville?

A. It was canned by the 40 Fathom Division in Boston.

Q. At a plant there in Boston?

A. Yes.

1478 Q. Did you consider Gentry as a possible source of supply for onion in 1951 when you first started to can clam chowder?

A. I would say no because I don't think we were even familiar with Gentry in 1951.

Q. How about Gentry's onion? Were you familiar with onion produced by Gentry?

A. No.

Q. Did you know that Gentry made onion that could be used in your clam chowder in the beginning?

A. No.

Q. When did you first become acquainted with Gentry as a producer of dehydrated onion?

A. I would say that was the first time a salesman called on us.

Q. Which was when?

A. Possibly the latter part of 1951 or 1952. I really don't know.

Q. Respondent's Exhibit 141 shows that you purchased 30 pounds of onion from Gentry during the year 1952—some time during that year. Does that refresh your recollection as to when you became aware of Gentry as a possible supplier of dehydrated onion?

A. Not any more specific on dates than 1952, no.

Q. How did you happen to become acquainted with the Gentry salesman?

A. He called at our office.

1479 Q. Do you know why he called at your office, how he got the lead?

A. No, I don't.

Q. When the Gentry salesman called on you, what did he say in an effort to get your business?

A. I wouldn't recall the conversation, but I am sure he must have said he had onion products for sale and he knew that we used them.

Q. Do you remember anything more specific than that?

A. No.

Q. What was the purpose of the 30 pounds purchased from Gentry during 1952?

A. I can only assume it was a trial order.

Q. On what do you base that assumption?

A. Because of the quantity.

Q. What was the result of your trial of Gentry's onion?

A. Since we don't have a laboratory to test our final product, I don't believe we would have any way of knowing the result of trying out that 30 pounds.

Q. Did you find that Gentry's onion was suitable for your canning?

A. Well, we continued to purchase it in the following year, so I would assume we did.

Q. You mentioned that the formula had been transferred to Bluepoints from the 40 Fathom Division and also, 1480 along with the formula, a list of the suppliers they had been using.

A. Yes.

Q. What discretion did you have at Bluepoints as to sources of supply for materials for chowder?

A. Once the operation was transferred to us and we were handling the sales ourselves, we could order from anyone we pleased.

Q. Did you have to order products to meet any specifications?

A. Well, the initial purchase orders which we were supplied by the 40 Fathom Division did give certain specifications. The products, as we received them—we had no way of determining whether those products met those specifications. We had no means of testing them.

Q. No laboratory?

A. No laboratory.

Q. You did check the product you were producing from time to time?

A. That's right.

Q. Did you check products in which Gentry's onion had been used?

A. Just as much as we have checked the product that included Basic's onion, yes.

Q. Did you find the products used with Gentry's onion produced satisfactory results?

Yes.

1481 Q. Between 1953 and 1956 you bought most of your onion requirements from Gentry rather than from Basic. What is the reason for that?

A. My best recollection on that is that the salesman for Gentry called more frequently and therefore got the business. He also arranged for us to buy on a yearly basis, thus insuring a steady supply and guaranteeing a price at which we could purchase for a period of three months during each of the four quarters of the year.

Q. What was the Gentry salesman's name who called upon you at this time?

A. Max Shapiro.

Q. During this same period of time, let's say 1953 to 1955, along in there, were you being called on by Basic salesmen?

A. Frankly, I can't remember the Basic salesman's making calls. I don't say he didn't, but they must have been so infrequent that I don't remember him at all.

1482 Q Do you remember his name?

A. I didn't remember his name until you told me what it was.

Q. Would you know him if he walked in the room today?

A. I might, but I question that.

Q. Would you know Max Shapiro if he walked in the room?

A. Yes, I would.

Q. How did you remember Max's name?

A. Well, only through the contacts. As I say, I think it was more frequent and he was a man whom you would take to, probably, more so than you would Mr. Gallo.

After I saw you last week, when I returned to the office I asked two other individuals in the office if they could remember the salesmen for the two companies and they could not remember the Basic salesman but they could remember Gentry's salesman.

Q. Were there any other reasons why you gave business to Gentry in 1953, 1954, 1955, 1956?

A. You better exclude '56, because that is not ours, I am sure.

Q. All right, through '55.

A. When Mr. Shapiro came in looking for business he not only looked for business in the ground onions which he sold us, but he offered other products and tried to see if these other products might help our products. In other
1483 words, he was interested not only in selling, but to make our product even better through the products that he had to sell.

Q. What other products are you referring to?

A. He talked about paprika.

Q. How could you use paprika?

A. He thought it would go well in the clam chowder, it would give more color.

Q. What kind of clam chowder?

A. The Manhattan Clam Chowder.

Q. When you gave your first order for onion to Max Shapiro, did you know at that time that Gentry was a division of Consolidated Foods?

A. I don't remember that I did, no.

Q. How did you first become aware that Gentry was a division of Consolidated Foods?

A. I check and arrange for payment of all invoices and I believe I saw the information on the invoice.

Q. Here is a copy of Commission's Exhibit 208, which is already in evidence in this case. It is a call report written by a Basic Vegetable Products' salesman whose initials are R.G.G., dated October 13, 1954. The report says, in part, "Mr. Shaff [sic] said that the reason they have placed their business with Gentry is because the largest customer they have for clam chowder is Consolidated Wholesale Grocers."

Was Consolidated the largest customer you had for
1484 your canned chowder?

A. No.

Q. At any time?

A. No.

Q. Did you ever tell a Basic salesman that Consolidated was your largest clam chowder customer?

A. No, because it is not true.

Q. Did you ever tell a Basic salesman that you placed your business with Gentry because Consolidated purchased any kind of clam chowder in any amount?

A. No.

Q. Was it true that you placed your business with Gentry because Consolidated bought your clam chowder?

A. No.

Q. Also, this call report states, "The Gentry man naturally mentioned this to him and he said that he had no alternative but to place his small business with them."

Did any Gentry salesman ever mention to you, or any Gentry man, the fact that Consolidated was buying your clam chowder?

A. No.

Q. Did any Gentry salesman mention to you that you had no alternative but to place your business with Gentry?

A. The Gentry salesman? No. If he had, he
1485 wouldn't have gotten any business.

Q. Did you ever say to any Basic salesman that a Gentry salesman had mentioned to you the fact that Consolidated bought your clam chowder?

A. Can you repeat that?

Mr. Rothe: Please read the question.

(Question read.)

A. No.

Q. Did you ever say to any Basic salesman that you had no alternative but to place your business with Gentry?

A. No.

Q. On October 20, 1958, in this case, Mr. Robert Sparling, who is the sales manager for Basic Vegetable Products, testified in this case that Basic had lost sales to your company, Bluepoint, because of the relationship between Gentry and Consolidated. Is that a true statement?

Mr. Hays: Objection, your Honor. I let this type of question go by yesterday, but I submit that Mr. Sparling stated that, in his opinion, he had lost such sales. I don't believe Mr. Sparling stated for a fact that he had lost sales, as Mr. Rothe characterizes his statement.

Mr. Rothe: I shall be happy to rephrase the question, pending such time as we can check the record on that point. By Mr. Rothe:

Q. Mr. Sparling testified, and I am taking Mr.
1486 Hays' word for this now, that in his opinion, Basic lost sales with your company because of the relationship between Consolidated and Gentry. Would it be a true statement that Basic did lose sales to your company because of a relationship between Consolidated and Gentry?

A. No, it is not true.

Q. We have told the Hearing Examiner that we have discussed your testifying here with you. Prior to the time that we discussed that with you, had you ever talked with

anyone about a relationship of any kind between your sales to Consolidated and your purchases of dehydrated onion for your clam chowder?

A. No.

Q. Did you have any communication of any kind concerning such a relationship?

A. None whatsoever.

Q. In buying such onion as you did from Gentry, what effect did the fact that your company sold clam chowder to Consolidated have on those purchases from Gentry?

A. None that I know of.

Mr. Walker: I will read the testimony of Mr. Sparling: the question by Mr. Hays:

"Q. Mr. Sparling, in your opinion, has Basic Vegetable Products Company lost any dehydrated onion or dehydrated garlic sales as a result of their relationship be-
1487 tween Gentry and Consolidated since April 1, 1951?

"A. Yes.

"Q. Will you state what sales you referred to?

"A. Are you referring to individual companies?

"Q. Yes.

"A. We have lost business to the Olympia Mushroom Company, Frank M. Wilson Canning Company," etc., giving a list of the companies, which included the Bluepoint Company.

Mr. Hays: I submit, your Honor, that it is quite obvious in that sequence of questions that the witness was answering as an opinion, although his direct answer speaks for itself. You will notice the way the sequence of the questions are phrased and the relationship of the subsidiary questions to the main question. If you do that, I am quite sure you will see Mr. Sparling was testifying as to his opinion. There is further testimony throughout the record and repeated references to his opinion on that point.

Hearing Examiner Kolb: We will have to take the record

as it stands at the present time, Mr. Hays. It doesn't say anything about opinion.

Mr. Hays: May I then direct your attention to the record, Page 450. Once again:

"Q. In your opinion has Basic Vegetable Products Company failed to obtain business from customers of Gentry as a result of the relationship between Gentry and Con-
1488 solidated since April of 1951?"

Hearing Examiner Kolb: That would necessarily be an opinion question.

Mr. Walker: That question was objected to and stricken, your Honor. That question was never answered.

Mr. Hays: I have record Page 449 and, as you will see, the questions here, starting with Line 13 — the ultimate question is by reference back to the opinion question:

"A. Yes.

"Q. Will you state what sales you refer to?"— that is, the ones in his opinion that he lost.

"Q. Are you referring to individual companies?

"A. Yes."

Quite obviously, he is expounding on his opinion there.

Mr. Rothe: If it will save any further rhubarbs of this sort, we will be happy to phrase the questions to the witness as they come up that in his opinion, Mr. Sparling testified they lost business.

Mr. Walker: Let's have the record clear that we are not admitting that Mr. Sparling qualified his testimony to that effect and we are impeaching his direct testimony as to lost sales with these witnesses.

Mr. Rothe: Your witness, Mr. Hays.

1489 *Cross Examination*

By Mr. Hays:

Q. At the present time do you sell clam chowder to Consolidated Foods?

A. We have not made any sales to Consolidated Foods of any kind since February of 1956.

Q. Prior to 1956 you sold your clam chowder to Consolidated Foods?

A. That's correct.

Q. During what time?

A. I know from 1953 to February 1st of 1956. I assume some sales were made from August of 1951 to August of 1953 to Consolidated Foods.

Q. What was the approximate dollar volume amount of those sales, please?

A. On an annual basis of clam chowder alone?

Q. Yes, sir.

A. About $5,000 a year.

Q. What were your annual sales of clam chowder for each of those years on a total annual basis?

A. I believe in the neighborhood of $100,000.

Q. And how many other customers of your clam chowder did you have in each of those years, approximately?

A. It would only be a guess: 50 or 60.

Q. During each of those years who was your largest 1490 purchaser of clam chowder?

A. I would think Safeway Stores.

Q. How much did they purchase, approximately, in each of those years?

A. I have no idea.

Q. Do you have any idea as to the amount — whether Consolidated Foods was one of your larger purchasers of clam chowder during each of those years?

A. No. I would say Safeway, A&P and possibly First National bought more than Consolidated Foods.

Q. Did anyone else buy more?

A. I don't know.

Q. Did you can that clam chowder under a private label for Consolidated Foods or was it your own label?

A. I believe I testified that we did some under our own label and some under their labels.

Q. Do you prefer to sell your products under your own labels or under the buyer's labels?

A. As long as we made the sale, we didn't care whose label went on a can.

Q. It made no difference to you?

A. No.

Q. Does your own label have any consumer acceptance?

A. Well, we like to think so, but there is no way of telling.

Q. Is it advertised?

1491 A. Did we advertise it?

Q. Yes, your own label.

A. We advertised on TV once for 12 or 13 weeks. It didn't mean a thing for us.

Mr. Hays: That's all I have.

Redirect Examination

By Mr. Rothe:

Q. The testimony you just gave, the answers you just gave, concerning your label, were you referring to the clam chowder and minced clams labels that you used for the name "Bluepoints" generally?

A. (No response.)

Q. I was not clear whether you were confining your answer to the canned products or the fresh oysters on clams.

A. I was talking about the canned clam products.

Q. Does your company name have any consumer acceptance in connection with fresh oysters and clams?

A. Yes.

Q. A different kind of acceptance than it had with respect to minced clams and clam chowder?

A. I believe so.

Q. What is the difference?

A. Our fresh products, especially oysters, the brand name is "Sealshipt" which to the trade that handles oysters, it is longstanding and it means quality.

1492 Q. When I go to the "Well of the Sea" at the Hotel Sherman in Chicago and buy bluepoint oysters, am I getting your oysters or should I be?

A. Well, I don't think you want to go into that here.

* * *

1493 MILTON FIRKSER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. What is your full name, please?

A. Milton Firkser.

Q. Your home address?

A. 69-64 185th Street, Flushing, New York.

Q. What is your occupation?

A. I am purchasing agent for S. Gumpert & Co., Inc., and its subsidiaries.

Q. Where are the home offices of S. Gumpert & Company?

A. 812 Jersey Avenue, Jersey City.

Q. Is that where your office is?

A. Yes.

Q. What are the subsidiaries of S. Gumpert and Company?

A. American Kitchen Products Company, Noxon Incorporated, Atmore and Sons, Incorporated, Blue Ribbon Distributing Corporation, Morrison and Company, Baker-Maid Company.

Q. Generally speaking, what kinds of products does S. Gumpert and Company and its subsidiaries sell? In that

1494 connection, also give the nature of the customers they service.

A. S. Gumpert and Company sells a line of food specialties, such as dessert powders, soups and soup bases, flavors and extracts, barbecue sauces, spaghetti sauces, cake bases, cake mixes to the institutional, bakery and ice cream trades.

Q. To anyone else?

A. No.

Q. How about American Kitchen Products?

A. American Kitchen Products manufactures and sells bouillon cubes to wholesale grocers and the retail grocery chains.

Q. How about Atmore?

A. Atmore sells plum pudding and mincemeat to the institutional trade, bakery trade, wholesale grocers and retail grocery chains.

Q. How about Noxon?

A. Noxon sells metal polish to the wholesale grocers and retail grocery chains.

Q. And Morrison?

A. They sell puddings and pie fillings to the wholesale grocers and retail grocery chains.

Q. How about Baker-Maid?

A. Baker-Maid sells bread ingredients, mainly, to the bakery trade.

Q. Through what channels do these companies sell their products?

1495 A. Mainly through our own salesmen and in a small way through food brokers.

Q. Under whose labels are the products sold?

A. Under our own labels and, in some cases, under the private labels of our customers.

Q. What products has S. Gumpert and Company itself, not the subsidiaries, sold to Consolidated Foods Corpora-

tion or any of its divisions and subsidiaries?

A. None.

Q. How about Atmore?

A. Plum pudding and, at one time, mincemeat.

Q. How about Blue Ribbon?

A. Bouillon cubes.

Q. American Kitchen Products?

A. A jellied consomme.

Q. And Noxon?

A. Metal polish.

Q. Morrison?

A. Puddings and pie fillings.

Q. During what period of time has Gumpert's subsidiaries supplied Consolidated?

A. At least since 1945.

Q. How large has been the volume of sales to Consolidated by Gumpert subsidiaries over the years?

A. I got this information from our treasurer who
1496 was able to compile some statistics going back to 1956, in which year I believe it amounted to $17,000 and it went up to $25,000 in 1959.

Q. That is for all subsidiaries of Gumpert?

A. Yes.

Q. Gumpert itself sold nothing?

A. Right.

Q. About what percentage of the total sales, composite, of Gumpert and its subsidiaries has been accounted for by its sales to Consolidated since 1956?

A. Somewhere between 2/10ths and 3/10ths of one percent.

Q. Annually?

A. Annually.

Q. About how large have been the total composite sales of Gumpert and its subsidiaries during those same years?

A. Between $8 and $9 million.

Q. Per year?

A. Per year.

Q. Have the subsidiaries' sales to Consolidated increased or decreased between these years, generally?

A. Increased.

Q. Have your sales to all customers increased or decreased over the years?

A. They have increased.

Q. What has been the reason for the increase in 1497 sales to all customers over the years?

A. Mainly a general uptrend of business.

Q. In which of the products of S. Gumpert and Company and its subsidiaries are onion, garlic and capsicums used?

A. Bouillon cubes, dehydrated onion soup and canned onion soup, barbecue sauce, spaghetti sauce, soup bases.

Q. Of the products you have just mentioned, which use onion, garlic or capsicums, which of these products has been sold to Consolidated?

A. Bouillon cubes.

Q. Only the bouillon cubes of those you mentioned that use onion, garlic or capsicums?

A. Only the bouillon cubes.

Q. Have you used fresh or dehydrated onion in the products that use onion?

A. Ever?

Q. Yes.

A. Up until about 1945 we used only fresh onion and garlic in our products. Since 1945 we have used the dehydrated material in bouillon cubes and our dehydrated onion soup and our soup bases. In our other products we have used both, sometimes dehydrated and sometimes fresh onion and garlic.

Q. What determines which you use, the fresh or the dehydrated?

A. Cost, the economics.

1498 If it works out more economically to use fresh, we will.

Q. At any particular time?

A. Mainly during the heavy packing season for us, which is in the late summer or early fall.

Q. So that in any given year if the cost factors are right during the packing season you use fresh rather than dehydrated onion?

A. That's true.

Q. Since 1948 who in your organization, and by that I mean S. Gumpert and Company and subsidiaries, has made the decision as to your source of supply for dehydrated onion and garlic and capsicums?

A. I have.

Q. Since 1948?

A. Yes.

Q. Do you have a laboratory?

A. Yes.

Q. What role does it play in the formulating of decisions as to where you will purchase the various raw materials?

A. A very important role. I cannot accept a potential supplier, put him on the list of suppliers, unless they pass his products, approve his products.

Q. The laboratory?

A. Yes.

1499 Q. Where is the laboratory located?

A. 812 Jersey Avenue.

Q. Does the laboratory also check incoming shipments of materials?

A. Yes.

Q. From whom over the years have you purchased your dehydrated onion and garlic?

A. Gentry, Basic Vegetable and, in small quantities, from Atlantis Sales Corporation.

Q. During what period of time have you purchased de-

hydrated onion and garlic from Basic?

A. Since we first started to use it, approximately 1500 1945.

* * *

(Thereupon, the document referred to, heretofore marked Respondent's Exhibit 142 for identification, was received in evidence.)

By Mr. Rothe:

Q. Why did you commence purchasing from Gentry in 1951?

1501 A. At that time what we call our tomato pack—products we make from fresh tomatoes—had become large enough to support two suppliers.

Q. What do you mean by "large enough"?

A. Our requirements of dehydrated onion which we used in these tomato products were large enough so that I felt it necessary to have more than one supplier.

Q. Had you not felt this necessary prior to 1951?

A. I doubt that. If I had, we would have had more than one supplier.

Q. Why do you want more than one source of supply for onion—why did you at that time?

A. The main reason is that as your pack becomes more important, the timing, especially when you are dealing with a fresh item, such as tomatoes, is very vital and we have to have all of our ingredients on time at the time that the fresh tomato comes in. They have to be handled immediately. With one supplier there is always a possibility that if something should happen, a strike or a breakdown of some sort, we might be left without enough raw materials to make our products.

Q. Respondent's Exhibit 142 shows that you bought 4,000 pounds of dehydrated onion from Gentry in 1951. Do you remember in what time of the year those onions were purchased?

A. These contracts, which is the basis of our purchase, generally are made at the beginning of the year.

1502 Q. By "beginning of the year," you mean what?

A. January or February, at the latest.

Q. Did you know that Gentry was a division of Consolidated Foods Corporation when you gave Gentry its first order?

A. Not that I recall.

Q. Once you took Gentry on as a second source of supply in 1951, how did you determine how much business to give Gentry?

A. There is one particular product of all the dehydrated onion and garlic that we buy—it is small chopped onions, the way we describe it, which is used in our spaghetti sauce and barbecue sauce. That is a single purchase, our largest single purchase of these items and I split that in half, half to Gentry and half to Basic.

Q. Ever since 1951?

A. Yes.

Q. Is this a mathematical splitting down the middle, 50-50?

A. Yes.

Q. How do you accomplish this split?

A. We estimate what our requirements are going to be and place a contract, half with Gentry and half with Basic.

Q. Other than this small chopped onion that you do split between Gentry and Basic, 50-50, where do you buy the rest of your onion requirements?

A. Practically all from Basic. There may be minor quantities from Atlantis.

Q. What other kinds of onions than chopped are
1503 we talking about?

A. Large chopped, large chopped toasted, sliced, onion powder. I believe that's it.

Q. I believe you said that the only product which Gum-

pert or its subsidiaries sell to Consolidated which contains dehydrated onion or garlic was bouillon cubes; am I correct?

A. Correct.

Q. Whose onion do you use in the bouillon cubes that you sell to Consolidated?

A. Basic.

Q. Always have?

A. Always.

Q. What capsicum products does your company use?

A. Paprika, chili powder—I believe that's it.

Q. Have you purchased any of your capsicum requirements from Gentry at any time?

A. No.

Q. We have explained to the Hearing Examiner that we have discussed with you your testimony in this case. Prior to the time you were contacted about testifying had you had any conversation with anyone concerning a relationship of any kind between the sales by Gumpert or its subsidiaries to Consolidated and your purchases of dehydrated onion or garlic or capsicums?

A. No.

1504 Q. Have you had a communication of any kind concerning that subject?

A. No.

Q. What effect has the fact that your company has sold to Consolidated had on such purchases of Gentry's onion and garlic as have been made?

A. None.

Mr. Rothe: Nothing more.

1505 *Cross Examination*

By Mr. Hays:

Q. I direct your attention to Respondent's Exhibit 142 and I note that there are no sales to Gentry in 1957. What

is the explanation for that fact?

A. You mean purchases from Gentry?

Q. Yes.

A. This must be a statistical error of some sort, because 1956 is doubled up. This data comes from Gentry. It is possible that they are dealing with contracts here. We may have let the 1956 and the 1957 contracts in one year, possibly 1956, in January 1956 and December 1956, but I am sure the actual receipt of merchandise would be split 10,000 pounds in '56 and 10,000 pounds in '57.

Mr. Walker: This is the end-of-the-year problem where the order is placed at the end of the year for the next year's production and it goes up on Gentry's books as being, in this case, a 1956 sale, whereas, actually, according to the company's books, it would be a 1957 purchase.

Mr. Rothe: The same problem you had with Beech-Nut earlier.

By Mr. Hays:

Q. With reference to 1952, I see that you purchased approximately 65,000 pounds of fresh onion. In what products was this fresh onion used?

1506 A. That would be spaghetti sauce, barbecue sauce, canned onion soup.

Q. In that year was any dehydrated onion used in spaghetti sauce, barbecue or canned onion soup?

A. I wouldn't recall. I would guess that we have used some every year, some dehydrated every year, even in those years where we used some fresh, but I couldn't tell from this.

Q. In 1953 you purchased approximately 26,000 pounds of fresh onion. Was that used in the same products?

A. Yes.

Q. Was it used in any other products?

A. No.

Q. For each of the years reflected on Respondent's Ex-

hibit 142 in which you purchased fresh onion, was that fresh onion used in these three products, spaghetti sauce, barbecue sauce and canned onion soup?

A. Yes.

Q. Was it used in any other products in any of those years?

A. No.

Q. What other products during each of those years did you manufacture that used onion of any kind, dehydrated or raw?

A. Other than the ones I mentioned before?

Q. Yes.

A. I would guess that that covers them all.

Q. In each of those years what products did you 1507 make that used dehydrated onion?

A. I would say that some of every one of those products used some dehydrated.

Q. Did you use dehydrated onion for any other products other than those three?

A. Are we just talking about those three?

Q. Did you use dehydrated onion in any other products other than these three products you mentioned?

A. Yes.

Q. What products were they?

A. Besides the barbecue sauce, spaghetti sauce and canned onion soup, there is dry onion soup, bouillon cubes, soup bases. I believe that would cover it.

Q. Did you use any of the fresh onion in any of these years in making your dry onion soup?

A. No.

Q. Did you use any of the fresh product in making any of your bouillon cubes?

A. No.

Q. Did you use any of the raw onion product in making your soup bases?

A. No.

Q. In each of these years to what extent was the dehydrated product used in the manufacture of spaghetti sauce, barbecue sauce and canned onion soup?

1508 A. It would be well over 50 percent. Exactly what the actual percentage is, I couldn't even guess now. I know it would be over 50 percent.

Q. In each of those products?

A. Well, the total of those poducts—all of the dried onions that we used in those three products, when you combine them, would total more than 50 percent of our total dehydrated purchases.

Q. Have you used in each of those years the dehydrated product in spaghetti sauce more than you have used it in either barbecue sauce or canned onion soup?

A. I believe so.

Q. When you have used the dehydrated product, dehydrated onion in the making of canned onion soup, to what extent have you used it in that particular product?

A. I wouldn't recall.

Q. To what extent have you used the dehydrated product in making your barbecue sauce?

A. I wouldn't recall that either.

Q. Why have you not used the raw product in making the dry onion soup and the bouillon cubes and the soup bases?

A. Because they are dry mixes. They are actually a mixture of dry ingredients.

Q. What form of the dehydrated onion have you used in the making of canned onion soups, what size?

1509 A. Canned onion soup would be sliced onions.

Q. What form of the dehydrated onion have you used in your barbecue sauce?

A. Small chopped.

Q. What form of dehydrated onion have you used for

your spaghetti sauce?

A. Small chopped.

Q. Have you ever made spaghetti sauce using exclusively dehydrated onion?

A. Oh, yes.

Q. Have you ever made it using exclusively fresh onions?

A. Yes—are you referring to an entire season or at any one time?

Q. In any one pack.

A. A pack for a full season? If you are talking about a pack for a full season, which runs, roughly, from the month of September, I would doubt that since 1945 we have used either one exclusively, if you are referring to that one pack.

Q. In other words, you have used the raw product and the dehydrated product together?

A. We don't mix them, but one day we might use raw and the next day we might use dry.

Q. For spaghetti sauce?

A. Yes.

Q. And canned onion soup?

1510 A. Yes.

Q. Is there any difference in the manner in which you process raw onion from the manner in which you process the dehydrated onion?

A. Well, not in the finished product, but we have to prepare the raw onion, whereas we don't have to prepare the dry onion, except to throw it in water.

Q. What type of preparation do you have to have with reference to the raw product?

A. We have to clean the onions. There is skin which we have to remove and also sometimes the stem. Usually the stem has to be removed.

Q. Is that all?

A. No, if it is going into onion soup, canned onion soup,

it has to be sliced. If it is going into spaghetti sauce or barbecue sauce, it has to be chopped.

Q. Do you have special machines for that purpose?

A. Yes.

Q. Do you have storage facilities for the raw product?

A. For a modest amount.

Q. Will you describe those facilities?

A. They would just be stored in the open. I guess they would be stored under a shed. They would not be stored indoors. They would be stored outdoors under a shed.

Q. Do you find that the use of the dehydrated
1511 product requires less processing and labor connected with it than the raw product does?

A. Yes.

Q. Is the dehydrated product more convenient to use for that reason?

A. Yes.

Q. Is the principal reason that you purchase the raw onion instead of the dehydrated onion the reason of price?

A. Yes.

Q. I take it that when the price of the fresh onion is lower than the price of the dehydrated product you will purchase the fresh product?

A. Yes. You have to naturally include labor in there. When the final cost of the fresh onion in the form in which we can place it into our finished product is lower than dehydrated, then we will use fresh, also assuming that we have the labor available.

Q. Just how much lower does the price of dehydrated onion have to get before it becomes advantageous to you—lower than the price of dehydrated product before it becomes advantageous to you to purchase the raw onion?

A. Well, theoretically, any amount that is lower than the dry onion would be an advantage.

Q. Wouldn't you have to take into consideration your processing cost with reference to the raw product?

1512 A. Yes, including that.

Q. I am speaking with reference to the price now. How much lower does the price of the raw product have to be lower than the dehydrated product for it to be advantageous for you to buy it?

A. I don't recall those figures.

Q. Do you grow onions yourself or does your company?

A. No.

Q. Where do you get these fresh onions?

A. From the farmers.

Q. In New Jersey?

A. No; upstate New York.

Q. Do you purchase them at any particular time of the year?

A. During our pack.

Q. What time of year is that?

A. Starting approximately September 1st.

Q. And continuing until when?

A. Possibly the end of the year.

Q. Do you make these purchases of raw onion from the individual farmers, or just how is that done?

A. Generally, they are made from the individual farmer, but through some sort of a broker. On fresh goods, usually, unless you are large enough to have your own man out in the fields, you arrange with someone to go out and

1513 contract for you.

Q. Do you have a particular broker that you use to make these purchases?

A. No one in particular, no—no one man. We might go to any one of a number of them.

Q. What are the names of some of the brokers that you have, that is, on fresh onions?

A. I don't recall them. I would have to check our records on that.

Mr. Hays: That's all, your Honor.

Mr. Rothe: One question, your Honor, that I overlooked on direct examination.

Redirect Examination

By Mr. Rothe:

Q. When you took on a second source of supply for onion or your tomato pack in 1951, why did you turn to Gentry?

A. Well, Gentry salesmen were calling on me for a number of years. That is the main reason.

Q. Did you know of any other source of supply that you could use as a second source at that time?

A. No—possibly Atlantis Sales, but I don't recall that I even considered them at the time.

Mr. Rothe: That's all.

Recross Examination

By Mr. Hays:

1514 Q. What was the name of the Gentry salesman that had been calling upon you?

A. Back then?

Q. Yes.

A. As I recall, that was either Mr. Schek or a Mr. Farrell, I believe—Mr. Schek or Mr. Farrell.

Q. Did you make your first purchase from either of those two gentlemen?

A. I believe so.

Q. Do you recall which one of the two it was?

A. No.

Q. Have you made any subsequent purchases from Mr. Farrell, subsequent to your first purchase?

A. I don't recall. I don't remember.

Mr. Hays: That's all.

Mr. Rothe: No further questions.

Hearing Examiner Kolb: On dehydrated onion, can that

be used from year to year? That doesn't have to be used in the same year, does it?

The Witness: It can be carried over, yes.

• • •

1516 New York, New York
August 26, 1960

1517 PROCEEDINGS

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FRANCIS CASTELLI was called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Francis Castelli.

1518 Q. Where do you live?

A. 327 Crestmont Road, Cedar Grove, New Jersey.

Q. What is your occupation?

A. I am president of Moore and Company Soups, Inc.

Q. Where is that company located, Mr. Castelli?

A. At 166 Abbington Avenue, Newark, New Jersey.

Q. How long have you been president of that company?

A. About 35 years.

Q. What are your duties as president of the company, Mr. Castelli?

A. General supervision, some particular tasks that I want to assign to anybody, but mainly general supervision.

Q. And the company is small enough so that you participate in all parts of the company?

A. Definitely, yes.

Q. In what business is the company engaged, Mr. Castelli?

A. In the manufacture of specialty soups and other ready-to-serve products.

Q. What kind of soups are those?

A. Anywhere from green turtle soup to onion, lobster bisque and so on.

Q. To whom do you sell your products, Mr. Castelli?

A. Generally, to wholesalers for distribution to retailers, some directly to retail, but mainly to wholesalers for distribution to retailers.

1519 Q. How do you market your products, sir?

A. We market through, as I say, distributors and sometimes directly to retailers.

Q. Do you have your own salesmen?

A. We don't have salesmen. We have brokers.

Q. Under whose labels do you market your products?

A. Two brands: Ancora and Bon Vivant.

Q. Do you also do some private label packing under the labels of customers?

A. We do, yes.

Q. About how much of your business is private label packing as opposed to your own label?

A. I would say roughly about 25 percent.

Q. What products has your company sold to any units of Consolidated Foods Corporation, Mr. Castelli?

A. To my recollection, we sold to Consolidated Foods, their own branch in Jacksonville, in 1957, two orders amounting to 20 cases, ten and ten, one in January and the other towards the end of the year, on the Ancora label, ten cases for each order.

Q. What kind of soup was that, Mr. Castelli?

A. Green turtle soup.

Q. Green turtle soup?

A. Yes, in quart cans.

Q. And this was to the Monarch branch in Jacksonville?

1520 A. The Monarch branch in Jacksonville, Florida, yes.

Q. How was that order obtained, if you know, Mr. Castelli?

A. It just came in the mail. It was unsolicited. It came in the mail. As far as I remember, it seems that some concern in Jacksonville or around Jacksonville requested this specific brand.

Q. Have there been any orders since that time?

A. No.

Q. Do you recall any other sales to any units of Consolidated?

A. I do not.

Q. Mr. Castelli, Mr. Van Natta, who is in charge of a portion of the Monarch operations in Chicago, testified in this proceeding that, to the best of his recollection, one of his units bought $180 worth of your products back in 1951. Do you have any recollection of that sale?

A. I do not have any recollection of that order, no.

Q. In which of your products do you use dehydrated onion, dehydrated garlic or capsicums?

A. Practically no dehydrated garlic; dehydrated onion particularly in onion soups and some other products where onion may be necessary, and the powder is used as a flavoring where onions are required. There are several products in which we use onion powder.

Q. Do you use any capsicums?

A. No.

1521 Q. Do you use any fresh onion?

A. Occasionally, very seldom.

Q. What do you use the fresh onion in?

A. Well, sometimes we have to make some sauces. The quantity needed is so small it does not pay and it is not

necessary to recondition the onions. I mean two or three pounds of onions in any given sauce we may be making, but actually the amount is negligible. It doesn't amount to 100 pounds a year.

Q. Mr. Castelli, who in your company has made the decisions as to your source of supply for dehydrated onion since 1950?

A. I did.

Q. Who actually places the orders for the dehydrated onion?

A. In the beginning, I always placed the orders. After, generally the office manager placed the order when filling in was necessary, so we kept the stock up to a point where we wanted it to be. It was a routine order.

Q. But he placed those orders only with sources of supply that you approved, is that right?

A. That's right.

Q. From what companies has Moore purchased it dehydrated onion?

A. I started with Gentry many years back.

Q. Excuse me, Mr. Castelli, but would you at this time tell us the names of the companies that you have bought from?

1522 A. Gentry and Basic.

* * *

1523 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 143 for identification, was received in evidence.)

By Mr. Walker:

Q. Mr. Castelli, would you be willing to keep your records available concerning your purchases of dehydrated onion so that if the government counsel should wish to inspect those records to verify this data, he could do so?

A. Yes. He can simply notify us and we can dig them up.

Q. Again directing your attention to Respondent's Exhibit 143, you will note that this shows that your company has been purchasing dehydrated onion from Gentry since 1946. Where did you buy your onion prior to 1946?

A. We did not use any onion prior to that, dehydrated onion, prior to 1946.

Q. What did you use?

1524 A. Fresh onion.

Q. Why did you choose Gentry as your source of supply when you switched to dehydrated onion in 1946?

A. Because I found them to have the most constant product, and also they went out of their way to cut the onion in the way I wished it to be cut, sliced. They cooperated with me since the very beginning.

Q. What is the explanation, Mr. Castelli, for your purchases of these small amounts of onion from Basic in 1949, 1950 and 1951?

A. From the amount, it looks like it was a sampling. I can't recollect exactly why, but I would say that they were to sample them to see if the quality was good and if the cut was good and if they were constant.

Q. Then except for those small orders, Gentry was your exclusive source of supply for onion until 1953?

A. Yes.

Q. Why did you begin buying larger quantities of onion from Basic in 1953?

A. Because there at times Gentry was out of stock and I could not afford to remain without it, particularly those years 1952 and 1953, when this particular product sold very well. I had to, of necessity, look to somebody else, which turned out to be Basic.

Q. Why did you continue to buy from Basic after 1953?

1525 A. For the same reason: to have a sure source of supply.

Q. After 1953, were you treating Basic as a second source of supply?

A. As a second source of supply, yes.

Q. And did you want them to get a share of your dehydrated onion business?

A. I did. In fact, I wanted them to have about 50 percent of the business.

Q. Well, what did you do to carry out this policy and to see that Basic did get about 50 percent of your business?

A. The office manager who had charge at the time to replenish stock when needed had my orders to give business, on a more or less 50 percent portion to either Basic or Gentry.

Q. Has that been your policy since that time; that is, since 1953?

A. It has been my policy, yes, since 1953.

Q. Directing your attention to 1954, as shown on this exhibit, Mr. Castelli, why did your company buy about two thirds of its requirements from Basic in 1954 and only about one third from Gentry?

A. Well, my orders were not obeyed exactly as given.

Q. We are now talking about 1954?

A. Yes, in which Basic supplied about 50 percent more than Gentry. These orders were given without my
1526 knowledge. The rule of the 50-50 no longer was in effect. I caught on and I stopped it and I reached what I said before, more or less a 50 percent portion to each.

Q. I want to take you back a little here. Do you recall that in 1953 or 1954 you had any problem, as you testified before, about getting all that you wanted from Gentry? What — was there a short supply so that they had difficulty in fulfilling your requirements?

A. Now and then they did run out of supplies, or at least supplies in the New York warehouse.

Q. Directing your attention to the years since 1954, Mr.

Castelli, did there come a time, as you have mentioned, when you found that your instructions were not being followed concerning the dividing of the business?

A. There was a time when I found out, yes.

Q. Do you remember when that was?

A. It was during 1954 — during 1955 that I found out that the Basic people were getting most of the orders. When I found that out I stopped the purchases from Basic until the rule of 50-50 was equallized.

Q. Who was your office manager in 1954?

A. To my recollection, in 1954, it was a Mr. Reynolds.

Q. About how long was Mr. Reynolds office manager?

A. A little over a year.

Q. Who succeeded him?

1527 A. Miss Rabinowitz.

Q. So that Miss Rabinowitz came in when, in 1955 or 1956?

A. That's right, yes.

Q. Who was the office manager at the time that you found your instructions were not being followed?

A. Miss Rabinowitz.

Q. I know it is difficult, Mr. Castelli, for you to keep these dates straight. We all have the same problem, but you have testified now that Miss Rabinowitz came in as the office manager in 1955 or 1956. Does that refresh your recollection as to when you learned that your instructions were not being followed?

A. I recollect exactly that Miss Rabinowitz was the office manager when I caught on to this particular abuse of orders. I distinctly recollect the date. The date may be a little hazy in my mind, but I recollect the fact.

Q. So that whenever it occurred, you learned that Miss Rabinowitz was not following your instructions, is that right?

A. No, she wasn't following my instructions.

Q. What instructions had you given Miss Rabinowitz?

A. To buy 50 percent approximately — approximately 50 percent from Gentry and 50 percent from Basic.

Q. Did you give her those instructions when she became office manager.

A. That's right.

1528 Q. How did you learn that your instructions were not being followed by Miss Rabinowitz?

A. Just looking at the books, one of those things, a usual check-up. I saw this large purchase from only one house. I asked why. There was no satisfactory explanation for it. I told Miss Rabinowitz to stop until she had equallized, to buy from Basic until she had equallized the situation, to keep from buying from Gentry.

Q. You told her to stop buying from Basic and buy from Gentry—

A. Until the situation was equallized, yes.

Q. Did she give you any explanation as to why she had violated your instructions?

A. Not a satisfactory explanation, no. The only explanation was that the Gentry man didn't call as often as the Basic man called. That wasn't satisfactory to me.

Q. What was your opinion at that time, Mr. Castelli, as to why Miss Rabinowitz did not follow your instructions?

A. It is simply an opinion that I am expressing. It was a very human reason. It was a young woman and a young man.

Q. By young man, you mean the Basic salesman?

A. Yes.

Q. Are you now dividing your business between Basic and Gentry?

A. Yes.

1529 Q. This is Commission's Exhibit No. 169, which is a memorandum dated October 14, 1958, from Bob Gallo to R. J. Sparling of Basic Vegetable Products, Inc.

Would you read this memorandum, please, Mr. Castelli, to yourself and let me know when you have finished reading it.

A. I have read it.

Q. This memorandum states that up until this year—that is, 1958 — Moore purchased most of their onion requirements from Basic. The memorandum then goes on to say: "Miss A. Rabinowitz, P.A., told me that Gentry had arranged with Mr. Castelli to sell his products to Consolidated Wholesale Grocery. This occurred in early January." Is that statement true?

A. Not as far as I am concerned. It is most certainly not true.

Q. Did you make any arrangement to sell your products to Consolidated in January of 1958?

A. I did not.

Q. You mentioned earlier that you bought from Gentry because you liked their product and the service that they had given you. Are there any other reasons why you have given most of your business to Gentry?

A. That is reason enough. They had gone to some trouble in doing things according to the wishes that I had. Naturally, the price was right and they treated me all right and it was a sense of loyalty to them. If I changed, it
1530 was not their own fault, but I had to have assurance of supply and I had to go to somebody else because now and then they would remain without supply. They may have had it in California, but they didn't have it in the New York warehouse, from where I bought.

Q. Mr. Castelli, I have explained to the Hearing Examiner that we have talked about this case and about the facts here. Before the time that you were contacted by us about testifying in this case, had you ever talked with anyone about a relationship of any kind between your company's

sales to Consolidated and your purchases of dehydrated onion?

A. Not to my recollection.

Q. Did you have any kind of communication on that subject?

A. None whatever.

Q. Mr. Castelli, what effect has the fact that Consolidated was a customer of yours at one time, and as a potential customer, had on the volume of your purchases from Gentry?

A. Absolutely no influence whatever in the purchases I may have had; no influence at all.

Q. On October 20, 1958, Mr. Robert Sparling, who is the sales manager of the Basic Company testified that, "We" —that is Basic—"have lost business to Moore and Company because of the relationship between Consolidated and Gentry." Is that true, sir?

A. No.

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1531 *Cross Examination*

By Mr. Hays:

Q. When did you first start selling to Consolidated Foods?

A. To my recollection, apparently there was an order some years ago for under $80, but the only orders I recollect are for ten cases each of the green turtle soup, one in January and the other towards the end of the year in 1958 or 1959—which of the two I forget—but I think it is 1958.

Q. That is all you have ever sold Consolidated Foods?

A. Yes.

Q. And what was the dollar amount of those orders?

A. I would say about $180 each.

Q. And those are the only sales that your company has made to Consolidated Foods?

A. Actually to Monarch, which is a division of Consolidated, in Jacksonville, Florida. There is no other order. I looked carefully and didn't find anything.

Q. How did you happen to make that sale?

A. I didn't.

1532 Q. You did not make the sale?

A. It just came out of the clear sky, if I can use that expression.

Q. Did you have any contact with any person at Consolidated Foods with reference to this sale?

A. No.

Q. Did you receive some communication from Consolidated Foods?

A. A written order from Jacksonville.

Q. And you have not had any other communications with reference to selling to Consolidated Foods?

A. No.

Q. Had you heard of Consolidated Foods when you made this first sale?

A. Certainly, I had heard of Consolidated Foods. I have known all along about them, also the units, Monarch and all the units that form Consolidated. Anyone has heard of that in my business.

Q. Would you consider Consolidated Foods a desirable customer?

A. Very.

Q. After receiving this initial order, did you hope to obtain further business from that company?

A. I always hoped to obtain further business. I had given to Consolidated samples a good many years ago, like anyone would do in order to get business, long before they ever had anything to do with Gentry. I don't know how

1533 many years ago. It was one of the most representative houses in the United States. It is certainly desirable for anybody to have them as a customer.

Q. What was Miss Rabinowitz' first name?

A. Anne.

Q. When was she first hired by your company?

A. To my recollection she was hired in 1955. I don't remember the period any more.

Q. Does she still work with your company?

A. That she started to work with my company.

Q. Does she still work for you?

A. No.

Q. When did her employment terminate?

A. In 1958.

Q. When in 1958?

A. I think it was October; I am not sure about it.

Q. When did you first learn that Miss Rabinowitz was not splitting the business 50-50 between Basic and Gentry?

A. It looks like that's, to my recollection, some time in 1955. I cannot remember the specific dates. It looks like it was in 1955.

Q. And subsequent to that time, did she follow your instructions?

A. Up to a point, she did, yes.

Q. What do you mean by "up to a point"?

1534 A. As I say, not exactly, but better than before.

Q. You were satisfied from 1955 until 1958 that she was following your instructions substantially?

A. Substantially, yes.

Q. Did Mr. Gallo continue to call on your company between 1955 and 1958?

A. Yes, and he still does.

Q. Do you know a Mr. LaSalle?

A. Yes, I do.

Q. What is his first name?

A. Anthony, if I recollect.

Q. Did he ever work for you?

A. He did.

Q. When did he work for you?

A. He worked some time in 1958, for a short period of time.

Q. When did he leave your company?

A. Towards the end of 1958 or the beginning of 1959. The dates are a little hazy in my mind. He worked not quite one year for us.

Q. And what did he do?

A. He was the office manager.

Q. Did he also make purchases of dehydrated onion and garlic?

A. He did, to replenish the stock as needed.

Q. When he first became office manager, did you give him instructions to purchase onion and garlic on a 50-50 basis?

1535 A. Yes.

Q. Were you satisfied that he followed your instructions?

A. I was satisfied that he followed my instructions, and he did more or less the usual thing. You know, the amount can never be exact, but he followed the instructions reasonably well.

Q. Do you know when in 1959, Mr. LaSalle left your company?

A. It seems to me that it was the beginning of the year, but I can't remember. I just can't remember the date when Mr. LaSalle left.

Q. And who is your present office manager?

A. Mr. Lawrence.

Q. What is his first name?

A. William.

Q. Was he hired as an office manager in 1959?

A. That's right.

Q. And he has continued to be office manager?

A. He is still with us as office manager, yes.

Q. When he first came with your company, did you give him instructions to split the purchases of dehydrated onion and garlic on a 50-50 basis?

A. Yes, I did.

Q. Are you satisfied that he has followed your instructions?

A. I am particularly satisfied with Mr. Lawrence. He has followed the instructions to the letter.

1536 Q. Did you purchase any dehydrated onion from Basic Vegetable Products Company during the period from February 1958 to November 1959?

A. Yes, I did.

Q. How much?

A. I can't remember, but I did, definitely, but I don't remember the amount.

Q. Did you purchase approximately 50 percent of your total requirements during that period—

A. I imagine about 50 percent.

Q. What Consolidated salesmen have called upon your company since you have been buying onion from them in 1950?

A. I didn't get you.

Q. What was the name of the Consolidated salesmen or the Gentry salesmen who have been calling on your company?

A. The present one's name is White. The one that preceded White, I can't recollect the name any more. I would know him, but I can't remember his name. The one who presently calls is White.

Q. Did you ever meet Mr. Farrell?

A. Yes, I did.

Q. Did he call upon your company.

A. He did; seldom, but he did now and then.

Q. What year was that?

A. I think Mr. Farrell—the last time I saw Mr.

1537 Farrell must be in 1958 or 1959. I remember having seen Mr. Farrell, but I can't remember the date.

Q. How old was Miss Rabinowitz?

A. She was 30 or 31 at the time.

Q. How old did you take Mr. Gallo to be in 1955?

A. Thirty-five or thirty-six.

Q. And how old did you take Mr. Farrell to be in 1958?

A. Well, he was a mature man. He could have been in his 50's. He had gray hair and glasses, as I remember him.

Q. On your direct examination, you implied or stated, rather, that it was your opinion that there was a personal relationship between Miss Rabinowitz and Mr. Gallo that caused her not to follow your instructions.

A. I did not say that, a personal relationship. I don't know the meaning of the words that you give, but my opinion was what I said before: a young man and a young woman.

Q. What do you mean by that?

A. A good salesman tries all the tricks that he possibly can in order to get orders. I can only say that, that he probably told her how nice she was and how beautiful. That is my assumption. I don't know, because I never heard him speak.

Q. Are you implying that Mr. Gallo did anything improper?

A. Most certainly not. Don't misunderstand me. Most certainly not. Mr. Gallo is a married man, among other things.

1538 Q. Let us describe this cooperation that Gentry gave you with reference to the sliced opion.

A. In the very beginning, when I started to buy from them, in 1946 or 1947, I explained the reason why I went into the dehydrated onion, because you could rest assured of a constant product, always the same. The onions that were presented to me the first time were well cut, but not

in the way I wanted them. I said if they could give it to me sliced, as onions should be, and they did.

Q. Gentry did?

A. Yes.

Q. From that time up until the present?

A. Yes, up until the present time.

Q. Has the onion that you have purchased from Basic since 1950 been sliced in the same manner?

A. Yes.

Q. What was the name of the broker that handled the sale to Consolidated Foods in 1958, I believe, to which you referred?

A. In 1958, it could have been Wayne Walker, who is still our broker.

Q. And what is his address?

A. Outside of Chicago. I don't recollect the address now. He was already our broker in 1958.

Q. Mr. Castelli, I direct your attention to Respond-
1539 ent's Exhibit 143 and to the year 1958. I believe this exhibit indicates that you purchased approximately 6200 pounds of dehydrated onion from Gentry and approximately 2900 pounds of dehydrated onion from Basic.

A. That's right.

Q. When did you first become aware of the fact that those were the purchases for that year?

A. I became aware of that fact not very long ago. I had no problem of that sort after 1957, the problem of watching that things were given out evenly. I became aware only lately of these purchases.

Q. So that in 1958, the business was not divided on a 50-50 basis? It obviously wasn't.

A. It obviously was not, but it is obvious that it was divided, because if you look at 1957, you will not that the contrary is true, this equalization that I am speaking about. It was unequal in 1957 against Gentry, and in 1958 it was

unequal against Basic, so that these two are more or less equalized.

Q. So that in your opinion, by the end of 1958, these purchases on a 50-50 basis had been equalized?

A. Equalized. According to these figures, they are almost equal in pounds for those two years.

Q. In other words, you are comparing 1957 and 1958.

A. Yes.

1540 Q. So they then balanced out?

A. They balanced out, yes.

Q. So that presumably in 1959, if you are still following that 50-50 ratio, fifty percent of the business went to Gentry and 50 percent went to Basic?

A. More or less, yes.

Q. Mr. Castelli, did you receive any shipments of dehydrated onion from Basic Vegetable Products Company during the period from February 1958 to November 1959?

A. I will state without hesitation that I did. How much it is, I don't know, but I did receive shipments. We even got one yesterday.

A. November 1959? You are asking me if we had some shipments from Basic?

Q. Yes, during that period.

A. I think we have. I couldn't swear to it right now because I didn't look in 1959. I didn't look at the 1959 period at all. I say that we did, but I cannot swear to this statement. I am not sure.

Q. I believe it was your testimony, however, that you have been splitting the business on a 50-50 basis?

A. Yes.

Q. At least since 1955?

A. Yes. That was my statement and still is. The fact that I qualified it I don't remember, this is the reason.

1541 We didn't have many onion purchases in 1959 because we had a large stock of onion at the end of 1958.

Sometiines we may not have purchased any onion at all. I don't remember any transaction in 1959, as far as purchases were concerned.

Q. In any event, you attempted to follow the same ratio in 1959 and 1960—

A. I still do.

Q. —which is reflected in 1957 and 1958?

A. That's right, the same policy as far as purchases are concerned.

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1542 *Redirect Examination*

By Mr. Walker:

Q. Mr. Castelli, I would like at this time to develop year by year some of the facts that you have been testifying to on direct examination and cross examination, and I would like to ask you, first, who was the office manager in 1954?

A. A Mr. Reynolds.

Q. Do you recall when Mr. Reynolds left your employment?

A. I do not recall exactly, but he left some time in—I think it was the end of '55 or the beginning of '56. I don't have any exact recollection.

Mr. Walker: Mr. Reporter, please mark this document Respondent's Exhibit No. 144 for identification.

(The document referred to was marked Respondent's Exhibit No. 144 for identification.)

Q. Mr. Castelli, I show you a document. This is
1543 a call report by a Gentry salesman dated August 20, 1956. I would like to have you examine this, please (handing document to witness).

Have you completed your examination of it, Mr. Castelli?

A. Yes, I have.

Q. This call report describes a call by the Gentry sales-

man, Mr. Schek, on Mr. Reynolds of your company on August 20, 1956. Does that refresh your recollection as to when Mr. Reynolds left your employ?

A. Somewhat, yes, by this statement.

Q. The call report states, "Mr. Reynolds told us that he will resign his position as of September 4th." Is it your best recollection now that Mr. Reynolds left your employ in September of 1956?

A. About that time.

Q. Who succeeded Mr. Reynolds?

A. Miss Rabinowitz.

Q. So that Miss Rabinowitz first came to work for your company in the fall of 1956, is that right?

A. Yes.

Q. You described in your direct and cross examination, Mr. Castelli, a conversation with Miss Rabinowitz wherein you talked to her about not giving the business, the onion business, one half to Gentry and one half to basic. Do you remember that?

1544 A. I remember the conversation, as I stated before, to give the business 50-50 to the two concerns.

Q. Pardon me?

A. I remember that conversation, instructing Miss Rabinowitz to confine our business 50-50 to Basic and Gentry.

Q. Since Miss Rabinowitz did not come to work for you until the fall of 1956, that conversation could not have taken place until after the fall of 1956, is that right?

A. After the fall; during the fall or after the fall. The exact time I do not recollect, but it did take place.

Q. So that it could not have taken place back in 1954 or 1955?

A. It could not. It could not have taken place if I didn't know Miss Rabinowitz at that time.

Q. Do you recall that Mr. Rothe and I asked you to look at your records to find out when you made those two sales

to Consolidated at Jacksonville?

A. Yes.

Q. And do you recall looking at your records?

A. I didn't look personally at the records. My accountant looked at the records and he gave me the exact date.

Q. He gave you the exact date?

A. Yes. I told him to be very careful to go through, not to skip, but to go through because it was important that I have those records.

1545 Q. I would like to have you search your mind carefully, Mr. Castelli, and give us your best recollection of what he told you as to when those sales to Consolidated were made.

A. I am hazy on the year. I know there were 20 cases, one in January, the other towards the fall. It seems to me it was in 1958. No sale was made before and none since.

Q. You don't recall telling us that it was in 1959, do you?

A. It may have been in 1959. I do not recall having told you. I had a notation about that. I don't have it with me. When I gave it to you, I read from what I had in front of my eyes, whatever it was, 1958 or 1959. I do not have an exact recollection of the year. I have an exact recollection of the amount, but not of the year. I know it was in Jacksonville.

Q. Do you have any recollection of a Gentry salesman ever contacting you and complaining about not having received any orders for a long period of time?

A. I have a hazy conception of the fact. I could not tell you who it was by name. I know it was from Gentry. I do not recollect the name. It could have been Mr. Schek, but I don't recollect. He said, "We don't get any orders." I went into the thing to see what was doing.

Q. Has the Basic salesman called on you during 1959, Mr. Castelli?

1546 A. I assume in 1959. How many times, I do not

remember. Sometimes, of course, I am out quite often. I remember seeing him two or three times. One time, recently, I remember, because he gave me some information about a house upstate, that they were going out of business, if I wanted to buy some equipment. That I remember exactly. I could have seen him a few times in 1959. I do not remember how many times.

Q. I know that you are reluctant to engage in personalities, but I must ask you this question. What have been your relationships with the Basic salesmen since 1958?

A. I would say they were not particularly cordial. It was a question of personality. It is not an individual that I particularly like, so that the relation cannot be very cordial.

Q. If you did not have particularly good relationships with the Basic salesmen during 1959, during this time, does this refresh your recollection at all as to whether you purchased onion from Basic during 1959?

A. It does not refresh my memory at all because I did not purchase onion.

Q. Pardon me?

A. I purchased onion, but not through me. The order came—in this particular case in 1959, it could have come from Mr. Lawrence or Mr. Paretti, also, who sometimes did give orders when Mr. Lawrence was out or any
1547 office manager was out, and Mr. Paretti gave an order.

Q. I want you to be very careful about this now, Mr. Castelli. Do you actually have a recollection as to whether you did or did not purchase onion from Basic in 1959?

A. I don't have an exact recollection, no; I do not have. From Basic, I do not have an exact recollection.

Q. Do you have an exact recollection as to when the conversation occurred with Miss Rabinowitz, when you chided her for not dividing the business?

A. I remember that I did not chide her. I was very sharp. I said, "From now on, you order 50-50, as I told you before to do." It was as brief as all that. It was in a rather sharp tone of voice.

Q. Do you have a precise recollection as to when that conversation took place?

A. Not a precise recollection. I remember the episode, but I do not have a precise recollection of the time of the day or the month or the year. I do not remember, but I remember the episode quite exactly.

Q. Is it your best recollection that you had one or more conversations with Miss Rabinowitz about this matter of dividing the business?

A. I only had that conversation, to my recollection. That was more than a conversation. There was no conversation, actually. It was an order.

1548 Q. Going back to the time in 1953 when you first started purchasing substantial quantities of onion from Basic, did you ask Basic at that time to slice the onions the way you wanted them?

A. As I recollect, as far as I can remember, there were purchases prior to 1953—they wanted to indicate to me that they were samples given to me to experiment, to see that they would meet the standards that I had. When I started to buy, I would say that they were already as I wanted them when I started to buy. Otherwise, I would not buy if they had been according to specification.

Q. I am going to have to ask you, if you don't mind, because you have testified that you have checked your records on these things and you can't remember what you found out from them—if you would be willing either to call your office or return to your office and pick up those records and bring them in so that we can get these dates fixed?

A. I will.

Q. Could you do that?

A. Must I bring them or can I send them?

Q. Pardon me?

A. Must I bring the records back or can I send them. Will I need to be present?

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[The witness was excused to obtain records.]

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1551 CHARLES RICHARD SHAW called as a witness on behalf of the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Charles Richard Shaw.

Q. Where do you live, Mr. Shaw?

1552 A. At 225 Fairview Road, Narberth, Pennsylvania.

Q. What is your occupation?

A. I am now manager, purchasing, Campbell Soup Company general offices.

Q. Where is the Campbell Soup Company's general office.

A. In Camden, New Jersey.

Q. Would you please state what other positions you have held with the Campbell Soup Company and during what periods of time you have held those positions?

A. I started with Campbell Soup Company in 1939 as a student trainee. I believe that was for about a year and a half. I went into the maintenance department as assistant to the superintendent until about May of 1942, when I went into the service in the Navy. I came out at the end of 1945. I went back to Campbell Soup in 1946, in the maintenance department. This was in the Camden plant purchasing department. From 1948 until 1957 I was assistant purchasing

agent. From 1957 to 1959 I was purchasing agent for all of the Camden plant. Since early 1959, I have been manager of purchasing at the general offices.

Q. What other plants does the Campbell Company have besides the one at Camden?

A. We have our main soup plants at Chicago, Illinois; Napoleon, Ohio; Sacramento, California. We also have plants at Salisbury, Maryland; Omaha, Nebraska;
1553 Modesto, California; Worthington, Minnesota; Fayetteville, Arkansas; and there are a few more.

Q. Where are the raw materials for the various plants purchased?

A. Each plant has their own purchasing department, and they are responsible for purchasing the ingredients that that particular plant requires, with the exception that certain items are purchased by the general office for the various plants and on occasion one plant will purchase ingredients for some of the other plants, depending on the various circumstances.

Q. Are dehydrated onion and garlic subject to centralized purchasing, or are they purchased by the individual plants separately?

A. Each plant purchases their own dehydrated garlic.

Q. To your knowledge, Mr. Shaw, has Campbell Soup Company purchased any dehydrated onion for use in its products?

A. About 1948 to 1951, we purchased a very small amount of dehydrated onion and we have not purchased any since, to my knowledge.

Q. Does the Campbell Soup Company use large quantities of fresh onion and garlic in its products?

A. Yes.

Q. I want to make it clear for the record that all of your purchasing activities and knowledge is limited to the
1554 Camden plant, is that right?

A. Except for the last year, when I have been at the general offices.

• • •

1553 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 145 for identification was received in evidence.)

Q. Mr. Shaw, Respondent's Exhibit 145 is a tabulation of Gentry's sales of dehydrated garlic to all Campbell plants during the period 1946 through 1958, as taken from Gentry's records. To your knowledge, was any dehydrated garlic purchased from any other source at the Camden plant?

A. Yes.

Q. From what company was that dehydrated garlic purchased?

A. Basic Vegetable Products.

Mr. Walker: Campbell Soup Company does not wish to disclose the amount of its purchases from Gentry's competitors and I will ask only the following question on that subject.

Q. Has Campbell Soup Company bought more or less than half of its requirements of dehydrated garlic from Gentry in the years 1954 through 1958?

A. Less than half.

Q. Do you have any records of purchases of dehydrated garlic prior to 1954?

A. No.

1556 Q. Please describe for us the mechanics by which a decision to purchase a commodity such as dehydrated garlic was made at the Camden plant during the time, and only during the time, when you were assistant purchasing agent and then purchasing agent.

A. Well, our company set up works in this way. Our research department establishes the specifications for any ingredient that we are to buy. They pass those specifica-

tions on to the purchasing department and to the control laboratory at each plant. Then it is the responsibility of the purchasing department to buy ingredients that meet those standards at the lowest possible price. It is also our responsibility to have as many sources of supply as possible so that we can get the best trading advantage. Once it has been established that we need a certain ingredient and the planning department sends a note to the purchasing department telling us what quantity they need of a particular item and when it is required to have delivery, it is then up to us to buy that to the company's best advantage. Once it is delivered, it is up to the control laboratory to determine whether or not it meets the specifications.

Q. Do they do so?

A. They certainly do. They sample every lot of every delivery, regardless of how small.

Q. Would that be true of dehydrated garlic at the Camden plant?

1557 A. Yes.

Q. I believe you said—but I would like to make sure, Mr. Shaw—upon what basis the choice is made among the suppliers once they have been approved by your laboratory?

A. Once we have a number of suppliers' ingredients approved by the laboratory, we then make our decision based on price and service. Frequently, it is strictly a matter of price. At least, we hope it is.

Q. Did you testify that in connection with making that decision, you take into account a two-source or several sources of supply policy?

A. We try to have as many sources as we can.

Q. During what period of time did you personally supervise the purchasing of dehydrated garlic at the Camden plant during the years 1950 to 1958?

A. Well, I know that it was at least from 1950 to 1953,

some time around 1953 or 1954, when Mr. Robinson was given the responsibility until 1956. Then it was passed on to a couple of other people from then on to 1958.

Q. I have already explained to the Hearing Examiner that we have talked about this case prior to your appearing here today. Prior to the time that you were contacted before testifying in this case, did you ever talk with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated garlic?

1558 A. No.

Q. Have you had any kind of a communication on that subject?

A. No.

Q. During the time that you were personally responsible for making decisions in the area of purchasing dehydrated garlic, Mr. Shaw, what effect did the fact that Consolidated was a customer of your company have on the volume of your purchases from Gentry?

A. None, because I didn't know they were a customer until the last year or two.

Q. You did not know that who was a customer?

A. I did not know that Consolidated was a customer.

Q. Just one more question, Mr. Shaw, so that the record will be perfectly clear as to your familiarity and the periods of your familiarity here. After you moved up in your position with the Campbell Company, after you stopped becoming personally responsible for purchasing dehydrated garlic, did you have any supervisory capacity over those purchases?

A. Well, at the present time, if they were to be purchased centrally, probably I would be the one assigned the responsibility.

Q. But you do not have any responsibility of that kind?

A. No.

Q. And did you have any review capacity over the individuals who did make the purchases in the last four or five years?

1559 A. No, I did not.

Mr. Walker: Your witness, Mr. Hays.

Cross Examination

By Mr. Hays:

Q. Mr. Shaw, do you know a Mr. Nixon who works in the Chicago sales office?

A. I know a Mr. Nixon who is vice president.

Q. There is a Mr. Nixon that is vice president of Campbell Soup?

A. Yes.

Q. How long has he been vice president of Campbell Soup, do you know?

A. I don't recall.

Q. With reference to the sales figures on Respondent's Exhibit 145, did you personally make all those purchases?

A. No, I did not.

Q. There were a number of other buyers that made purchases of dehydrated garlic during the period 1952 to 1958?

A. Yes.

Q. During the period from 1952 to 1958, did you have anything to do with the sales of Campbell Soup products?

A. No.

Q. With reference to the quantities of raw onion that Campbell Soup purchases, from what source does Campbell obtain those raw onions?

1560 A. I have never purchased the raw onions. I do know that we get some in New York State, but beyond that I don't know the areas. There are quite a few areas around the country where onions are grown. Just where they are, I am not familiar since I have never purchased the fresh vegetables.

Q. And those fresh vegetable purchases are made through what office of Campbell Soup?

A. Each plant purchases its own, usually.

Q. Do you know any of the reasons for purchasing raw onion rather than dehydrated onion?

A. Only that the research department specified raw onion on certain products. As I testified earlier, we have not used any dehydrated onion since 1951.

Q. Is that because of the specifications to which you have just referred?

A. Yes. The research department has full responsibility for establishing specifications. All we can do is buy what they tell us to.

Q. Do you know anything about the manner in which the raw onions are handled once they have been purchased by Campbell Soup?

A. Only that they are cleaned up and prepared and diced and put in the soup.

Q. Do you know anything about the machinery and the storage facilities that are necessary for raw onions?

1561 A. Only in a very general way.

Q. Is the processing machinery used in processing raw onions the same machinery that is used in processing other raw vegetables?

A. I was going to say that some of it might be, but generally, I believe, it is different.

Q. Are the raw onions which are purchased processed in the same plants that other raw vegetables are processed in?

A. Well, each plant is a complete unit in itself and the raw materials are brought into that plant and are prepared for the product and put in the soup in that plant.

Q. And the Campbell Soup products use a substantial amount of other raw vegetables, other than raw onion, do they not?

A. Yes, that's right.

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1563 FRANCIS CASTELLI resumed the stand and, having been previously duly sworn, testified further as follows:

Redirect Examination

By Mr. Walker:

Q. Have you since you were last on the stand this morning called your office to verify certain information?

A. I have.

Q. Whom did you talk to, sir?

A. I talked to Mr. Lawrence, who is the office manager.

Q. Did you find out from Mr. Lawrence what the dates of your sales to Consolidated's Jacksonville unit were?

A. Yes.

Q. What were the dates of the orders?

A. The dates are as follows: October 29, 1958, ten cases No. 3 green turtle soup to Monarch in Jacksonville. We have an order signed by Mr. Walker. Also a letter in which

1564 he explains that since Francis H. Leggett had discontinued business in the same section, they were trying to get the Leggett business. If it turned out to be all right, they would follow with other orders, which they did. On January 29, 1959, another ten cases of the same product, and another order on June 26, 1959, for the same amount, also signed by Walker.

Q. Who is Mr. Walker?

A. The manager of the Jacksonville branch of Monarch or Consolidated, whatever you want to call it, of the Jacksonville branch.

Q. So that the order came directly from the Jacksonville branch and not through a broker, is that right?

A. Yes, and we also have the explanation why.

Q. Have there been any orders from the Jacksonville branch since that time?

A. Not since that time.

Q. Have there been any orders from any other part of Consolidated?

A. No.

Q. Were there any orders prior to that time?

A. No orders to my knowledge.

Q. Mr. Castelli, have you been able to confirm the date that Mr. Reynolds resigned?

A. Yes.

Q. When was that?

1565 A. In October 1956.

Q. Were you able to obtain the dates of the various orders that were placed with Basic during the year 1957?

A. Yes, I have.

Q. Would you read into the record, please, the dates on which orders were placed with Basic in the year 1957?

A. They are as follows: August 9, 1957, 500 pounds; August 16, 550 pounds; September 20th, 550 pounds; October 4th, 1,100; November 8th, 550; November 22nd, 1,100; December 10th, 1,200; December 31st, 2,930.

Q. Are those invoice dates?

A. These are invoice dates, yes, the ones I gave.

Q. And what are the dates of the invoices for purchases from Gentry during 1957?

A. None whatever.

Q. Don't you have some record there for 1957 for Gentry, Mr. Castelli?

A. There isn't a purchase in 1957 from Gentry. Excuse me, yes, I have.

Q. Will you read those dates, please?

A. Yes, pardon me. February 1, 1957, Gentry, 1,600; April 15, 1957, 500; May 16th, 500. That's all for 1957 from Gentry.

Q. So that, according to your records, there were no purchases from Gentry after May 16, 1957 until the

1566 end of 1957, is that right?

A. The end of 1957, yes.

Q. Do your records show any purchases from Basic in the year 1958?

A. None.

Mr. Walker: I would like to point out to the Examiner, in relation to Respondent's Exhibit 143, that this shows 2,930 pounds of onions purchased from Basic in 1958. Mr. Moore's record shows no purchases during 1958. They do show an order of 2,930 pounds, invoice date being December 31, 1957, so that it looks as if this is another one of the situations where we have the receipt date and the order was actually placed during 1957.

Mr. Hays: The order was placed in 1958 and it was shipped in 1957, is that correct?

Mr. Walker: No, the invoice date is December 31, 1957, so it could not have been shipped during 1957 and must have been shipped in 1958.

Hearing Examiner Kolb: You mean the order date, not the invoice date.

The Witness: We go by date of invoice, so we took this date December 31, 1957.

Mr. Walker: I said that wrong, your Honor. December 31, 1957 is the invoice date, and that is the date that the products are invoiced by the shipping company 1567 out in California, or wherever it is, to Mr. Castelli.

The goods go into transportation and actually arrive at Mr. Castelli's place after December 31, 1957 and are put in 1958. These are invoice dates.

Hearing Examiner Kolb: I think you mentioned order date.

(Record read.)

Q. Do your records show any purchases from Basic in the year 1959?

A. No.

Q. Mr. Castelli, does this data that you have obtained

help you fix the time of your conversation with Miss Rabinowitz?

A. Definitely.

Q. And what is that time?

A. Well, some time in early 1958.

Q. And how does this data help you fix the time of your conversation with Miss Rabinowitz?

A. From the amount, I must have looked at the record and seen the great amount of onion bought in this particular case from Basic, and I asked her why she had done that. No, I didn't ask her why. I said I will not stand for anything of that sort. My orders were to buy equally from the two, and from now to keep on buying from Gentry in order to equalize the surplus that she had given to Basic.

Mr. Walker: Your witness, Mr. Hays.

1568 *Recross Examination*

By Mr. Hays:

Q. Do your records show any purchases from Gentry in 1959?

A. Yes.

Q. What do your records show?

A. They show a total of 5,560 pounds.

Q. Do your records show any purchases from Basic in 1960?

A. I don't have that record.

Q. Do your records show any purchases from Gentry in 1960?

A. No, I don't have those records, but I do know that we purchased from both. I don't know the amount.

Q. Did you receive any shipments of dehydrated onion in 1960?

A. Yes, we did; oh, yes, several.

Q. You recently testified that you now recall that your conversation with Miss Rabinowitz occurred in 1958?

A. That's right.

Q. Prior to the occurrence—let me place the time. Just when in 1958 did you have that conversation with her?

A. I would say that I had a conversation in March or April.

Q. Of 1958?

A. Yes.

Q. Was that the first conversation you ever had with her, telling her to place orders on a 50-50 basis?

A. It was the first conversation. In fact, it was
1569 not a conversation at all. It was an order to stop buying—

Q. What was that? Was that the first order you ever gave her to buy on a 50-50 basis?

A. Yes, outside of the original order when I said I want these things on a 50-50 basis when she first came with me.

Q. When she first came with you?

A. That's right.

Q. When was that, sir?

A. Sometime in 1956.

Q. I direct your attention to Respondent's Exhibit 143. Do you consider that the purchases in 1955 were on a 50-50 basis?

A. In 1955, I don't have the data here. You have to go back to 1954 to understand that figure.

Q. In other words, if you had a Gentry purchase in 1954 and 1955 and add the Basic purchases in those same—if you add the Gentry sales in 1954 and the Basic sales in 1954 and 1955, you would have then had it on a 50-50 basis?

A. More or less, yes.

Q. In 1953, do you consider that those purchases were on a 50-50 basis?

A. No, I do not consider that, because in 1953, that is

the first time we started to do business directly with Basic.

Q. And they were not on a 50-50 basis?

A. No, they were not on a 50-50 basis then.

Q. Since 1958, have you checked your records to
1570 determine whether the purchases were on a 50-50 basis?

A. I have checked the records more or less, and I am satisfied more or less. In 1958-59, that is the period of time in which Gentry came to equalize with the purchases from Basic.

Q. And since 1958, you consider them to be on a 50-50 basis?

A. Well, I would say since 1959 I consider them to be on a 50-50 basis.

Q. Since the first part of 1959—

A. I would say that because you can see the difference between the purchases in 1957, which was quite a difference in favor of Basic, and it took quite a lot of time to equalize them.

Mr. Walker: Please instruct the witness to please listen carefully to the questions, because I don't think he is doing so. May I ask that the last question and answer be read back?

Hearing Examiner Kolb: Certainly.

(Question and answer read.)

A. (Continuing) I would say yes since 1958.

Q. And do you say "yes" with the matter brought to your attention that the 2930 pounds which are carried on Respondent's Exhibit 143 as being purchase in 1958 from Basic were received when, sir?

A. They must have been received in the very beginning of 1958 because the invoice order is December 31, 1957.

* * *

1571 Hearing Examiner Kolb: When you say you equal-

ized the Basic and the Gentry purchases, you equalized them without buying anything from Basic in 1958 and 1959, is that correct?

The Witness: Exactly.

* * *

1572 FRANK L. COOLEY called as a witness on behalf of the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. State your full name?

A. Frank L. Cooley.

Q. Where do you live, your home address?

A. Morris Plains, New Jersey, 27 Glenbrook Road.

Q. What is your occupation?

A. At the present time I am secretary of American Instants, Inc.

Q. What business is that?

A. Instant coffee.

Q. Prior to the time you became associated with this company, what was your occupation?

A. I was with American Home Foods in the capacity of production manager.

Q. Where?

A. At Morris Plains, New Jersey.

Q. At the Morris Plains plant?

A. Right.

1573 Q. What duties did you have as production manager?

A. My responsibilities included purchasing, personnel and production.

* * *

(Whereupon, the document referred to was received 1574 in evidence as Respondent's Exhibit No. 146.)

Q. Mr. Cooley, if at any time the attorneys for the government should like to see the cards from which these figures were compiled, will you make them available to them?

A. Yes, sir, I will never keep anything from the government.

Q. Mr. Cooley, here is Respondent's Exhibit 136. Will you read that over, please, and let me know when you are finished.

A. Yes, sir.

Q. In 1952, who was responsible for making decisions as to the Morris Plains source of supply for dehydrated onions?

A. I was.

Q. Do you remember receiving a copy of a memorandum from Mr. Reinecke to Mr. Powell which is Respondent's Exhibit No. 136?

A. I remember.

Q. What it says in that memorandum, "Our Morris Plains office has no record of the address for any local or eastern sales office," referring to Gentry, what does that mean?

A. Well, I am not completely clear on it, but it would indicate to me that Dick Reinecke must have called me to ask me if I had anything on Gentry. I must have advised him no because I would have been the logical one for him to contact.

Q. If your plant, your office at the Morris Plains
1575 plant, had no record of the address of any Gentry sales office, what would that mean?

A. It would mean that they had never been in touch with us.

Q. After you received a copy of the memorandum which is Respondent's Exhibit No. 136, did a Gentry salesman call on you?

A. He must have. I gave him business later on.

Q. Why did you give him the business?

A. Well, among other things, it is only common business practice to have at least two sources of supply on your items. Granted we only had one source of supply for some time, but that was previous to my handling of the purchases. Frankly, I just consider it good business practice to have more than one source of supply for any product.

Q. Before you gave the business to Gentry, did you have any lab test run on Gentry's product?

A. I don't recall offhand, but that was common practice at our plant. It still is today.

Q. Mr. Cooley, had you ever had any conversation, other than the one you mentioned with Dr. Reinecke, concerning any kind of relationship between American Home Foods sales to Consolidated Foods Corporation and its purchases of dehydrated onion?

A. I had nothing to do with the sales department and as such I don't believe I would have ever been advised
1576 or contacted or in any way, shape or form advised as to who our customers were for the product.

Q. Did you have any conversation concerning a relationship of the kind I mentioned?

A. Not to my recollection.

Q. What effect did the fact that Consolidated Foods Corporation was a customer of American Home Foods in 1952 and thereafter have on your purchases of dehydrated onion from Gentry?

A. It had none, as far as I am personally concerned. We operated as a separate unit.

Q. You will notice that on the bottom of this exhibit, Respondent's 135, there is some handwriting. Is any of the handwriting on the document your handwriting?

A. No, sir.

Mr. Rothe: That is all.

Cross Examination

By Mr. Hays:

Q. Is American Instants, Inc. affiliated with any other corporation?

A. Yes, sir, the Duncan Coffee Company, Houston, Texas.

Q. Does your company sell anything to Consolidated Foods?

A. There, again, I do not know. We do not from the Morris Plains plant.

Q. Did you purchase anything from Gentry at your 1577 Morris Plains plant prior to 1953?

A. No, sir; at least, not during my regime there.

Q. How far back does your regime go?

A. 1945.

Q. And from 1945 to 1953, no Gentry salesman called at your plant?

A. Not to the best of my knowledge, not contacting me. I say that. Of course, I can't recollect everyone who came in and out of the plant, but had someone called on me, I am sure it would have been in my files. Dr. Reinecke's letter here indicating that I had no record would indicate that they had not called on me.

Q. Did Dr. Reinecke's letter indicate to you that he was favorably disposed to your purchasing from Gentry?

A. I would say, from the face of this here, that he would give the same consideration to them as any other possible supplier. Assuming that their quality, price and service were adequate, anyone is entitled to come in and look for business.

Q. What was the name of the salesman who contacted you prior to the first order given to Gentry?

A. That I don't know. I know that a gentleman by the name of Oscar Schek was one who called on us later, when

I was last connected with the business; that is, when we got out in 1958. Who it was originally, I do not know.

Q. Did Mr. Joe Farrell ever contact you?

1578 A. The name sounds familiar, but as such I can't recall it. I wouldn't know the gentleman if he walked in.

Q. Did you find that the Gentry product was equal in price, quality and service before you made that first purchase?

A. Yes, sir, or the first purchase would not have been made.

Q. Was the price equal or better than Basic's price?

A. As I recall, I think they were about the same price straight through.

Q. Was the quality the same?

A. According to our research department, they were on an equal basis, approved sources of supply.

Q. And the service was the same?

A. Yes.

Q. Prior to 1953, during your term, did you make any search to determine whether there were any alternative sources of supply for dehydrated onion?

A. I do not recall, but I would assume that had been done.

Q. You don't recall that?

A. No, I don't recall.

Q. Did you have alternative sources of supply on every product that you purchased during this period?

A. There, again, I cannot answer that a hundred percent, but I would say that probably in 98 percent of the cases we do have alternate sources of supply.

1579 Q. Did you purchase from each of those alternatives during each of the years 1953 to 1958?

A. I can't say definitely, but I would assume yes.

Q. Once you received Dr. Reinecke's letter—that is,

Respondent's Exhibit 136—did it cause you to expect to receive a call from the Gentry salesman?

A. That would be normal.

Q. In other words, you expected to see the Gentry salesman shortly after you received this letter, Respondent's Exhibit 136?

A. I would expect it from a letter of that nature, yes.

Q. In 1952, was Dr. Reinecke your superior?

A. He was one of them. He wasn't my immediate superior.

Q. Who was your immediate superior?

A. In 1952? I believe it was a Mr. Fletcher Chase.

Q. What was his title?

A. His title was plant manager.

Q. This G. Washington's broth, was that an American Home Foods label or a private label?

A. Their own label, their own brand.

Q. American Home Foods' brand?

A. American Home Foods bought the rights to the name from the G. Washington Company in 1943.

Q. Do you recognize the handwriting that is on the bottom of Respondent's Exhibit 136, from the middle of the page down?

1580 A. No, sir.

Q. Had you ever heard of Gentry before receiving this letter from Dr. Reinecke?

A. I don't know. I don't think in connection with anything that I had ever been familiar with. I might have heard the name at one time or another, but I was certainly not familiar with them.

Q. Did you know that they sold dehydrated onion in 1952?

A. I doubt it.

Mr. Hays: That is all, your Honor.

Redirect Examination

By Mr. Rothe:

Q. Looking at Respondent's Exhibit 146, Mr. Cooley, it appears that during the period 1953 through 1958, on balance, the bulk of your business went to Basic rather than to Gentry. Why was that?

A. Well, I don't know any particular reason other than one practice which I normally follow.

Q. Which is what?

A. They had been our source of supply for a long time, and when I have a secondary source of supply, I normally use them as a secondary source and not as a major source.

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1581 BERNARD E. McINTYRE was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

Q. Would you state your full name, please?

A. Bernard Edward McIntyre.

Q. Where do you live?

A. At 652 Highland Avenue, Peekskill, New York.

Q. What is your occupation?

A. I am purchasing agent for Standard Brands at their Peekskill, New York plant.

Q. How long have you held that position?

A. Since 1956.

Q. What position did you hold prior to that?

A. I was assistant purchasing agent for 13 years.

Q. What functions have you performed in the purchasing of dehydrated onion and garlic, Mr. McIntyre?

A. While I was assistant purchasing agent, I assisted Mr. William Whitney, who was the purchasing agent, in purchasing both of those products. Since I have been

1582 purchasing agent, I have purchased both those items myself.

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1583 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit 147 for identification, was received in evidence.)

By Mr. Walker:

Q. Mr. McIntyre, would you be willing to hold your records available from which this data was obtained so that the government could inspect those records if they desired to do so?

A. If it is necessary, we have purchase orders on file and they will be available for anybody to look at them.

Q. During what period of time have you used dehydrated garlic, Mr. McIntyre?

A. Since 1958.

1584 Q. Do you recall the amount of dehydrated garlic that you purchased in 1958?

A. Yes, sir, I do, because I have been looking into this whole matter. It is 30 pounds.

Q. In what products has Standard Brands used dehydrated onion?

A. Well, dehydrated onion is used in rye sour, rye flavoring, chicken soup base, and onion soup base.

Q. During what period of time has Standard Brands manufactured rye flavoring and rye sour?

A. If there is no objection, I have a couple of notes on dates that I can refer to. Standard Brands has been marketing rye sour since 1940 and they have been marketing rye flavor since 1950.

Q. What are the rye flavoring and rye sour, Mr. McIntyre?

A. Basically, they are flavoring agents for the bakery trade.

Q. What kind of dehydrated onion is used in rye flavor-

ing and rye sour?

A. Onion powder.

Q. Onion powder?

A. That's right.

Q. What sources of supply have you used for that powdered onion?

A. We have obtained our supply of that material from Gentry.

1585 Q. Referring to Respondent's Exhibit 147, Mr. McIntyre, what type of dehydrated onion are these purchases from Gentry in the years 1946 to 1956?

A. That would be only for the rye flavor and the rye sour.

Q. That would be the powdered onion?

A. Yes, sir.

Q. Why did you buy your powdered onion for those products from Gentry during those years?

A. We had used Gentry's products and found the quality and service to be good. We were able to obtain a quality product. That is why we purchased from them.

Q. This exhibit, Mr. McIntyre, if you will look at that again, shows a large increase in your purchases of dehydrated onion in 1957, from 1,050 pounds in 1956 to a little over 58,000 pounds in 1957. Was all of that increase bought for your rye flavor and rye sour?

A. No, sir.

Q. What product was it used in?

A. Chicken soup base.

Q. When was that product developed?

A. In 1957.

Q. What kind of dehydrated onion is used in the chicken soup base?

A. Onion powder.

Q. What source of supply have you used for that
1586 powdered onion?

A. Gentry.

Q. Only Gentry?

A. Yes, sir.

Q. Why?

A. When this product was developed by our research department, they gave us the formula and also a list of possible suppliers whose products had been tested and proved to be satisfactory for our chicken soup base. We in the Peekskill plant had some of this material, the onion powder, on hand from our rye flavor and rye sour, and we ran a pilot plant, a production run to test it. We found that it gave us what we considered to be a quality product; we just expanded our purchases of this product from Gentry.

Q. Was there any other reason for using Gentry's powdered onion in this product?

A. No.

Q. This exhibit shows, Mr. McIntyre, Respondent's Exhibit No. 147, that you returned 29,400 pounds of dehydrated onion to Gentry in 1958 and that you bought only 4,550 pounds during that year. What is the reason for that?

A. When we went in to a new product, sales had given us a forecast of anticipated sales. Naturally, we purchased sufficient ingredients to produce what they expected to sell.

Unfortunately, those sales did not come up to expec-
1587 tation, so we had to cut back on production and the purchasing of raw materials.

Q. What then accounts for the increase in your purchases from Gentry in 1959, where it was 20,300 pounds?

A. Well, there, our sales, I would say, began to level off and we went back into a bigger production. Naturally, we had to buy more raw material or ingredients.

Q. And the dehydrated onions that we have been talking about here, in 1957, 1958 and 1959, which were purchased from Gentry, that is still all powdered onion?

A. Yes.

Q. Why did you buy from Basic in 1959?

A. Well, that is a different commodity. That is not powdered onion. That is a toasted chopped onion. It was used in our onion soup base.

Q. When was that onion soup base developed?

A. In 1958 and 1959.

Q. Have you used Basic as your sole source of supply for this toasted chopped onion for the onion soup base?

A. Yes, sir.

Q. Why?

A. They had worked very closely with our research department when we were developing this new product, and we thought for that reason, we should give them some of the business.

Q. Well, was any other producer's toasted chopped
1588 onion tested by the laboratory in developing the new onion soup base?

A. When we received the formula and specifications from our research department, they also listed as a possible source of supply Gentry.

Q. Why didn't you use Gentry's toasted chopped onion?

A. Would you repeat that question?

Q. Why have you not used Gentry's toasted chopped onion?

A. Because our specifications on a toasted chopped onion call for a certain bulk density which Gentry could not supply.

Q. And did Basic meet that requirement?

A. Yes, sir.

Q. Mr. McIntyre, did the Gentry salesman make any comment when it was learned that Gentry would not be your source of supply for the toasted chopped onion?

A. Yes, sir.

Q. What did he say?

A. Well, he was rather disappointed in the fact that he was going to lose the toasted chopped onion business, and he

said that they would try to meet the specifications which we require and hoped that possibly at a later date he would get some of the business.

Q. Have they gotten any of the business?

A. No, sir.

Q. Why not?

1589 A. For the simple reason that they have not met the specifications.

Q. What type of laboratory control is exercised after a product goes into production at your plant?

A. You say after it goes into production?

Q. Yes, sir.

A. We cannot purchase any material unless it meets laboratory specifications. On all deliveries of raw material, all shipments, I should say, that is laboratory-tested. It must meet laboratory specifications before it is placed into our production.

Q. Would you please describe the extent to which the Gentry and Basic salesmen have worked with your laboratory and production people?

A. I would say that they would have to work very closely with our research department because they would have to know our development procedures and also our production procedure as well as any production problem.

Q. Mr. McIntyre, I have explained to the Hearing Examiner that you have discussed the facts of this matter with us prior to today, and I want to ask you this: prior to the time that you were contacted to be a witness in this case, had you ever talked with anyone about a relationship of any kind between your companies' sales to Consolidated and your purchases of dehydrated onion or garlic?

A. No.

1590 Q. Have you had any kind of a communication on that subject?

A. No, sir.

Q. What effect has the fact that Consolidated is a customer of your company had on the volume of your purchases from Gentry over the years?

A. None whatsoever.

Q. When did you first learn that Gentry was a division of Consolidated, Mr. McIntyre?

A. I am a little embarrassed on this one, but I would say it is approximately two months ago when Mr. Rothe got in touch with me regarding the purchases of powdered onion from Gentry with relation to the purchases of Consolidated Foods Corporation from Standard Brands.

Q. Mr. McIntyre, could you state generally the products that are manufactured and sold by Standard Brands? Are there any other than the ones you have mentioned here?

A. Yes, sir, there are.

Q. What are those?

A. Well, we have Fleischman's yeast, we have Fleischman vinegar. We have bouillon cubes. We have Royal baking powder. We have various dough improvers which are sold to the bakery trade, and that is all from the Peekskill plant. Are you interested in the other products of Standard Brands in our other plants?

Q. Yes, if you know them, Mr. McIntyre.

1591 A. Well, we have all the Royal puddings and the Royal gelatine. We have Chase and Sanborn coffee. We have Tenderleaf tea. We have Blue Bonnet margarine and we have Fleischman margarine. I think that is the extent of what I know.

Q. You don't have any responsibilities in connection with sales, do you?

A. No responsibility at all.

Q. Have you ascertained the methods by which Standard Brands sells its products?

A. Yes, I have.

Q. How do they?

A. Well, in our grocery division we sell to retailers, wholesalers, chain stores, and truck distributors. Now, all of those sales in that division are handled strictly by Standard Brands. In the Fleischman division, they sell to institutions, hotels, and the bakery trade. There are a few occasions where the accounts are so small that it wouldn't pay us to service them ourselves, so we have distributors. All of these, outside of the retail business, are shipped into warehouses from where they are distributed.

Q. Has the information that you have just given us been obtained by you for purposes of testifying here today?

A. In case the question was asked, yes.

Mr. Walker: Your Honor, we had at one point
1592 thought that we might call a witness from the sales side of Standard Brands and we can still do so. However, if Mr. Hays would be willing to consider it, we would like to suggest a stipulation that if Mr. T. E. Fulton, who is an assistant vice president of Standard Brands, were called as a witness, he would testify to certain information regarding the dollar volume of Standard Brands' sales to Consolidated since 1956 and the total sales by Standard Brands since 1956.

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1593 Mr. Walker: Yes. Then the stipulation will be that if Mr. Fulton, Assistant Vice President of Standard Brands, were called as a witness, he would testify that in the year 1956, approximately $1 million of Standard Brands' products were sold to Consolidated; that in 1957, the amount was about $1,100,000; that in 1958, about $1,250,000, and in 1959, about $1,230,000.

He also would testify that the total sales by Standard Brands during each of those years was about $470 million in 1956; $514 million in 1957; $520 million in 1958; and $522 million in 1959.

Mr. Hays: It is so stipulated.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. Mr. McIntyre, I direct your attention to Respondent's Exhibit 147. In connection with the purchases from Gentry in 1957, you will note an asterisk and the explanation appears to be at the bottom that 29,400 pounds were returned in 1958. Does that explanation mean that 29,400 pounds were actually in the Peekskill plant and were shipped back to Gentry?

A. Yes, sir.

Q. Does Standard Brands have other processing plants other than the one at which you are employed?

A. Yes, sir.

1594 Q. Where are they located?

A. We have a plant in Pekin, Illinois; Chicago, Illinois; Dallas, Texas; Oakland, California; Sumner, Washington, which are all yeast plants, with some other commodities in there. We have a vinegar plant in Montgomery, Alabama, and Baltimore, Maryland. We have the margarine plant in Indianapolis; our coffee and tea plant is in Hoboken, New Jersey. That is all domestic. Of course, we have plants in Canada, Central and South America.

Q. Has your purchasing experience been limited to purchases at the Peekskill plant?

A. Yes, sir.

Q. From 1950 to 1956, you were assistant purchasing agent, is that correct?

A. From 1943 to 1956.

Q. Did you make all of the purchases for that plant during that time period?

A. No, sir.

Q. From 1957 to the present, you have been in charge of

purchasing at the Peekshill plant?

A. Yes, sir.

Q. During the period that you have been in charge of those purchases, have you personally handled each purchase?

A. Yes, sir.

Q. In connection with your relations with the Basic salesman, has that salesman attempted to sell you onion powder?

1595 A. With all due respect to the salesman, I have yet to see one from Basic.

Q. You have not seen a Basic salesman?

A. No, sir.

Q. In other words, this chopped onion is not sold by a salesman?

A. It was originally sent in the formula on the onion soup base, with a list of possible suppliers, of which Basic was one and had submitted samples that would meet our specifications. We have purchased it by issuing our purchase orders to their office, but I have yet to see a salesman. It is my understanding, sir, that he has called on our New York office, but he has not called on me in Peekskill.

Q. Do you have a purchasing office in New York?

A. Our main home office is in New York.

Q. Who is in charge of purchasing there?

A. We have a vice president in charge of procurement, but we have other purchasing agents there who handle different commodities, some on a national basis and some that they purchase for our Hoboken plant.

Q. With reference to the 29,400 pounds of dehydrated onion that was returned, how long did that onion remain in your plant before it was returned?

A. I would say almost a year.

Q. You were fortunate that you did not order that 1596 much fresh onion.

A. We were fortunate in a lot of ways on that problem that we had.

Q. Does your purchasing authority in New York, in the

New York office, issue to you a list of approved suppliers of various products?

A. No, sir; we are decentralized. We use decentralized purchasing. In other words, on 97 percent, I would say, of the commodities and the raw material and the packaging material that comes into our various plants, they are handled on a plant level. There are a few commodities where it is to our advantage to combine purchases for all of our plants, and that, I would say, is done on a central purchasing agent basis in New York.

Q. What are the advantages of combining purchases from all plants?

A. The big advantage, if you can get sufficient volume for all of the plants, sometimes you can get a better price.

Q. What was the name of the Gentry salesman who has been calling on you since 1950, if any?

A. The gentlemen that I remember calling; I would not want to say that this goes back to 1950, since I am not sure, but the gentleman who has been calling on me for a number of years is a Mr. Oscar Schek.

Q. With whom did you develop the chicken soup base formula?

1597 A. With whom?

Q. Yes.

A. That was handled in our research lab in Stamford, Connecticut.

Q. In the event that the Gentry chopped onion meets your specifications, is it your present intention also to purchase that chopped onion from Gentry?

A. No, sir.

Q. Do you intend to continue to purchase only from Basic?

A. With the understanding that they would still supply us with toasted chopped onions that meet our specifications, especially on the part of the bulk density.

Q. And you would not consider combining those purchases for the possible advantage of obtaining a better price?

A. I wouldn't say that at a later date I wouldn't.

Mr. Hays: That is all I have, your Honor.

Hearing Examiner Kolb: Any further questions?

Redirect Examination

By Mr. Walker:

Q. Is any dehydrated onion used in any plant other than the Peekskill plant?

A. No, sir.

Q. Is any dehydrated onion purchased by your central office in New York?

1598 A. There would be no reason for it because no other plant uses it outside of Peekskill.

Q. Have you personally participated in all the decisions as to the source of supply for your dehydrated onion in the years 1950 to the present?

A. To a certain extent, from 1950 to 1956, when I was assistant purchasing agent. I assisted Mr. Whitney in those decisions. Since 1956 to the present date, I have made the decision.

Q. And was your assistance in the earlier years such that you knew the reasons why sources of supply were chosen?

A. Yes, sir.

Q. Did you have any discussion with Gentry about why they were willing to accept the return of that 29,400 pounds in 1958, Mr. McIntyre?

A. We wrote to them and told them that we were over a barrel on this; that we had purchased more than our requirements called for, and we asked them if they would take it back and give us full credit. We have that on file where we wrote the correspondence and all. They come

back and said they would accept the return. We shipped it to them and got full credit.

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1600 New York, New York
August 27, 1960

1601 PROCEEDINGS

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HENRI RETHIER called as a witness by the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. I would like to ask you in your testimony if you would, please, to talk slowly and distinctly, so that the reporter can get all of the conversation down.

A. Yes.

Q. State your full name, please.

A. Rethier.

Q. What is your first name?

A. Henri.

Q. Where do you live?

A. In Lake Katrine, New York.

Q. What is your occupation?

A. I am a soup manufacturer.

Q. What is the name of the company?

A. Les Pommiers.

Q. Are you the proprietor of that company?

A. Yes, sir.

1602 Q. What products do you make?

A. I make onion soup, consomme Madrilene, vichyssoise, lentil soup, lobster bisque, shrimp bisque.

Q. To whom do you sell your soups?

A. We sell to about two dozen different companies.

Since the merging, we have a little less number of customers; the merging of different distributors.

Q. Through what channels do you sell your soups? Who helps you sell them?

A. A broker.

Q. Under whose labels do you sell your soups?

A. I am selling under Francis Leggett and Jules Weber.

Q. Mostly under the labels of your customers?

A. Yes, sir. Very little under my own.

Q. Very little under your own label?

A. Yes.

Q. What is your own label?

A. My own label is also Les Pommiers.

Q. Which of your soups have you sold to any units of Consolidated Foods Corporation, Mr. Rethier?

A. Onion soup; and recently, [incomplete].

Q. Under what label have you sold your onion soup to Consolidated?

A. We started under Reid Murdoch, and Monarch, and now they call themselves Consolidated.

1603 Q. The Reid Murdoch label you sell under is Monarch?

A. Yes.

Q. Do you also sell onion soup under the Richelieu label?

A. Yes.

Q. Under what label do you sell the vichyssoise?

A. To Consolidated, also.

Q. Is that the Monarch label?

A. Yes, sir.

Q. During what period of time have you sold your onion soup to Consolidated under the Monarch label?

A. We began in 1950.

Q. During what period of time have you sold your onion soup to Consolidated under the Richelieu label?

A. In 1954.

Q. When did you start selling your vichyssoise to Reid Murdoch, that is, under the Monarch label?

A. In 1957.

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1604 (Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 148 for identifica-
1605 tion, was received in evidence.)

By Mr. Walker:

Q. If you will look, please, Mr. Rethier, at Respondent's Exhibit 148, the paper that you have in front of you, why did your sales to Consolidated go down in 1954, if you recall?

A. They all did. My distribution went down, due to the competition and the lack of enthusiasm on the onion soup.

Q. Is Consolidated your largest customer, Mr. Rethier?

A. Now, yes, sir.

Q. For how long have they been your largest customer?

A. About a year.

Q. Who was your largest customer before that?

A. Francis Leggett, before they went out of business.

Q. Mr. Rethier, what kinds of dehydrated onion have you used? Do you understand what I mean by what kinds?

A. Yes.

Q. Would you tell us, please?

A. I used large white flakes.

Q. What other kinds?

A. I used some smaller flakes for my lentil soup.

Q. Do you also use some powder?

A. I use some powder.

Q. Which product do you use the large flakes in?

A. For the onion soup.

1606 Q. And you use the small flakes for the lentil soup; is that right?

A. Yes.

Q. What products do you use the powder in?

A. I use the powder for French dressing and for a different kind of stew that I pack locally there.

Q. What kind do you use in your lobster and shrimp bisque?

A. Powdered onion.

Q. Have you also used powdered garlic?

A. In the bisque?

Q. In any product.

A. Yes.

Q. What products do you use powdered garlic in?

A. In French dressing. Excuse me. I told you that before. Your question was onion?

Q. Yes.

A. I meant garlic.

Q. Then you use the powdered garlic in your French dressing and in your stews, is that right?

A. Yes, sir.

Q. And you don't use any powdered onion in those products, is that right?

A. I don't get the question.

Q. I'm sorry, Mr. Rethier. Do you use any powdered onion in your French dressing and your stews?

1607 A. In the stew, yes; not in the French dressing.

Q. From what company have you bought your powdered garlic?

A. From Basic.

Q. Who has done the purchasing of your dehydrated onion and garlic?

A. I did.

Q. From what companies have you bought dehydrated onion?

A. I bought mostly from Basic, and in about 1954 I started to buy a few from Gentry.

Q. What other companies have you bought dehydrated onion from?

A. John Phillip.

Q. Is that domestic or imported?

A. Imported.

Q. Have you also bought from Van Loan & Company?

A. Yes.

Q. Do you know whose onion Van Loan & Company uses, that is, who manufactures it?

A. When I place the order, I didn't know.

Q. What kind of business is Van Loan & Company in?

A. Spice.

* * *

1609 (Whereupon, the document referred to, Respondent's Exhibit No. 149 for identification, was received in evidence.)

By Mr. Walker:

Q. Do you recall how you happened to first buy any dehydrated onion from Gentry?

A. I received some kind of magazine, a circular; an advertisement, in other words. I was having difficulty with Basic about a contract. He wanted such a high contract that I was scared. I told him I was unable—

Q. Excuse me for interrupting you here. I would like to go back to just this circular that you mentioned before. Did you order a sample of dehydrated onion from Gentry after you got this circular?

A. I did.

Q. When was this, Mr. Rethier?

A. It was in 1949.

Q. Did you test this sample?

A. Yes.

Q. What was the result of the test?

A. Not satisfactory.

Q. Why not?

1610 A. The flakes were too thick and they were too brown, and it discolored the soup.

Q. If you will look, please, at Respondent's Exhibit 149, you will notice that it shows that you bought 3,055 pounds of dehydrated onion from Gentry in 1954. Do you see the figure there?

A. Yes.

Q. Before you bought that 3,055 pounds from Gentry, before you bought that, did you get any other samples of Gentry's onion?

A. Yes, sir.

Q. Did you test those samples?

A. Yes.

Q. Did the quality improve?

A. Very much so.

Q. Mr. Rethier, why did you buy the 3,055 pounds of onion from Gentry in 1954?

A. We are going back to my not liking to sign a contract with Basic. Meanwhile, the quality of Gentry onion was surpassing Basic.

Q. Would you describe what you mean by this contract that Basic wanted you to sign?

A. 15,000 pounds. I had to sign that with Basic onion.

Q. Did they tell you that you didn't have to take all that onion?

1611 A. That's what they say; but my answer was, "What's the use to have a contract"?

Q. Did Gentry require a contract?

A. No.

Mr. Walker: Mark this letter, please, as Respondent's Exhibit 150 for identification.

(The document referred to was marked Respondent's Exhibit No. 150 for identification.)

By Mr. Walker:

Q. Mr. Rethier, you have been handed a copy of a letter dated November 7, 1953, from you to Basic Vegetable Products, Inc. This has been marked as Respondent's Exhibit

150 for identification. Did you write this letter to Basic Vegetable Products, Inc.?

A. Yes.

* * *

1612 Q. This letter of November 7, 1953 that you have in front of you states that you would like to request chubby barrels from Basic. Did Basic send their product to you in chubby barrels as a result of this request?

A. No.

Q. What kind of barrels did Gentry have in 1954, when you got the onion from them?

A. They were very short and very wide.

Q. Would you explain why you say here, "I don't like those tall barrels, as the women cannot get to the bottom of them and they are an unnecessary inconvenience." Will you explain a little more what the problem is with the tall barrels, Mr. Rethier?

A. Yes. The barrel was very narrow and much higher than an ordinary woman. She had difficulty to pick up the merchandise, the onion, to put on the tray, in which she had to dip a measure with each can of onion. That's one of the reasons. Another reason is, those barrels you can see when you came half away that they were very broken. There were no longer flakes. That had a tendency to be the cause from transportation.

1613 Q. Does Basic still ship you onion in the tall barrel?

A. Yes.

Mr. Walker: This is Commission's Exhibit 167 that has been handed to the witness. This exhibit, of course, is already in evidence.

Q. You have been handed a document which is a copy of a report written by a saleman for Basic Vegetable Prod-

ucts, Inc. on September 17, 1954. Would you read this, please, and let me know when you have finished reading it?

A. Yes.

Q. You have read it?

A. Yes, I did.

Q. Directing your attention to the upper right-hand corner, Mr. Rethier, where the initials "RGG" appear, who is that, do you know?

A. It must be Bob Gallo.

Q. I would like to read to you the second sentence of this report, and I quote: "He"—referring to you—"said that no sooner had he mailed them samples and prices when the Gentry salesman, Max Shapiro, called on him and told him that he would have to buy their onions if he expected to sell Reid Murdoch." Did Max Shapiro ever say that to you?

A. Never.

Q. Did you ever tell Bob Gallo, or any Basic salesman, that Max Shapiro had said that to you?

1614 A. No.

Q. You have been handed a copy of a document which is Respondent's Exhibit 56 already in evidence. This is another one of these reports by Basic salesman RGG. It is dated November 8, 1954. Would you read it, please, and let me know when you have finished reading?

(Short pause.)

A. Yes, I am finished reading.

Q. You have already told us that you did start selling Sprague Warner Division your soups under the Richelieu label in 1954, but I want to ask you this. This report states: "He—that is, you—"purchased his last lot of onion flakes, 1,000 pounds, from Gentry because of this." Did you purchase onion from Gentry at any time because you were selling your onion soup to Sprague Warner under the Richelieu label?

A. No.

Q. Did you purchase onion from Gentry at any time because you were selling your soups to Reid Murdoch?

A. Never.

Q. Did you ever tell Bob Gallo that you purchased onion flakes from Gentry because you were selling Sprague Warner?

A. No.

Q. You have already testified, Mr. Rethier, as to why you purchased from Gentry in 1954. Why did you purchase from Gentry in the years after 1954? Why did you 1615 continue buying from Gentry?

A. The reason is that the merchandise was very satisfactory.

Q. And they supplied you the products in the kind of barrels that you liked?

A. Yes, sir.

Q. Mr. Rethier, I would like to have you explain to the Hearing Examiner, if you would, please, in your own words, the story of how you came to start packing soup under the Richelieu label in 1954.

A. Yes. I received a letter from my broker, who was Schambaugh at the time, stating that we might lose Reid Murdoch unless we match the same kind of soup which was packed at that time by Sprague Warner under the Richelieu name. I immediately asked for some sample, which my broker didn't send. I fired him and I appointed Mr. Campbell. He sent me a sample. When I opened the sample, I was quite surprised that the soup of that quality was—I would describe it as mediocre. It couldn't move. I wrote a letter to Mr. Alan Flemming.

Q. Would that be Cummings?

A. Cummings, yes; where at that time I described that no future will happen with that kind of soup. Since already Reid Murdoch had a good name, I don't see why they didn't keep it up. Mr. Alan Cummings sent me back a copy of

my letter. Then he wrote to the buyer to call my
1616 broker, who was then Campbell at that time, to tell him that some label was on my way and to pack for Richelieu the same kind of product I packed for Reid Murdoch. I have been packing continuously since.

Q. Mr. Rethier, while all this was going on, in any conversations that you had with anyone about your soups, that is, with your broker or with anyone at Consolidated, or anyone else, was anything said about your using Gentry's onion?

A. I never saw anybody from Consolidated since I was in Chicago in 1950, which I was using then fresh onion, and I never saw my broker—only correspondence—which proved it was impossible for me to contact or talk to anyone.

Q. Have you at my request looked at your files and looked at the copies of this correspondence?

A. This?

Q. Have you at my request looked at the files for the correspondence you have had with Consolidated and with your broker about selling soups?

A. Yes.

Q. Is there anything in those letters which refers to your using Gentry's onion?

A. No.

Q. Mr. Rethier, did you ever have any conversation with anyone from the government about your sales to Consolidated and your purchases of dehydrated onion?

1617 A. Yes.

Q. When was that, sir?

A. About three years ago.

Q. Did the government representative tell you why he came to see you?

A. Not right away.

Q. Did he at any time tell you why he was there?

A. Yes.

Q. What did he say, Mr. Rethier?

A. He identified himself as representing the United States Government. That's all he said right away. I said that Food and Drug people were here only a couple of months ago. They don't come that often. He said, "I am not from Food and Drug; I am an investigator." That's all.

"What do you want to know?"

He said, "I want to go through your cannery and warehouse." He asked me where I buy my onion. There was some name on the barrel which I showed him, and he asked me for whom I was packing. I have different kinds of shelves where I have all the labels of different companies and I showed him. He asked me if the Gentry people were coming very often. I said no, maybe once a year.

He says, "Do you have correspondence?" and I said, "No, only when I have an order to give."

He says, "You see, we got to find out if you were 1618 more or less" — he didn't use the name "force," but he used a name that meant a little bit like that, if I was forced to buy Gentry onion, since he see the Monarch label there.

Q. What did you tell him?

A. I said no, never.

Q. Did you tell him why you did buy from Gentry?

A. Yes. I showed him the onion barrel. That was the main thing that I was very much interested in that day.

Q. When you say you showed him the onion barrel, you mean you explained to him why you have the short barrels from Gentry and why you liked them?

A. Yes.

Q. Did you tell him anything about Gentry's quality, the quality of their products?

A. Yes. I explained also how big and beautiful they were now.

Q. Was there onion from both Basic and Gentry at your plant at that time, Mr. Rethier?

A. I am quite sure. I usually have.

Q. Did you ever tell Bob Gallo this conversation you had with the government representative?

A. Yes. I told the man that represented the government I was a little bit annoyed. The questioning lasted for about five hours. I asked him who, what kind of complaint, to explain who did it. He says he was not allowed to
1619 tell me. I says, "I bet you Basic." He didn't deny it.

* * *

By Mr. Walker:

Q. I don't think that you completed answering the last question. You were going to tell us what you said to Bob Gallo about this.

A. I said to the government inspector—

Q. No. The question is what you said to Bob Gallo about your talk with the government representative.

A. I called New York first, to Basic.

1620 Q. What did you say to Bob Gallo?

A. Gallo wasn't there. So when Gallo passed for an order, he said he doesn't know nothing about it.

Q. Mr. Rethier, I would like to show you again Respondent's Exhibit 149, which shows your purchases of dehydrated onion. This exhibit shows, Mr. Rethier, that in 1957 and 1958 you bought more dehydrated onion from Basic than you did from Gentry. What is the reason for that?

A. Because Gentry wouldn't give me enough credit, nor enough length at the time.

Q. Does Basic give you credit?

A. Unlimited.

Q. Did you ever write or talk to anyone at Gentry and say to them that they should give you credit because you were selling to Consolidated?

A. I say that on the telephone, yes.

Q. What did you say? Would you tell us in your own words, please?

A. I say that I was packing for Murdoch. I still called Murdoch "Consolidated," since they were the same company, or I hear they were the same company, because I am not too sure, and that they could have the check mailed from Chicago to to [sic] Gentry in New York, and they mailed me the balance. The answer was, "No, we have nothing to do with Consolidated. We are entirely two different companies."

1621 Q. The document which has been handed to you is Commission's Exhibit 169, already in evidence in this case. This is a memorandum from Bob Gallo to Mr. Sparling, of Basic, dated October 14, 1958. Directing your attention, Mr. Rethier, to the second paragraph, which states, "I have two accounts in my territory that were pressured into buying from Gentry because of sales to Consolidated Wholesale. They are, number one, Les Pommiers, Lake Katrine, New York." Is that statement true, Mr. Rethier?

A. No, sir.

Q. Mr. Rethier, except for the conversations that you have testified about in the course of your direct examination here, have you ever talked with anyone at Gentry about your sales to Consolidated?

A. You mean that I was packing for them, or the amount of the sale?

Q. Either one. Did you have any discussion, did you talk with anybody at Gentry, about the volume of your sales to Consolidated?

A. I didn't. There is one thing I want the gentlemen to remember. Gentry never came down to my cannery. Gallo always did.

Q. I am sorry, I didn't hear that.

A. The Gentry people, the salesmen, never came to my cannery.

Q. That was in the early years, right? Oscar Schek 1622 has called on you, hasn't he?

A. In my house.

Q. But he has not come to your cannery?

A. No.

Q. Have you ever talked to anyone at Consolidated about your purchases from Gentry?

A. No.

Q. Mr. Rethier, what effect has the fact that Consolidated is a customer of yours had on the volume of your purchases from Gentry?

A. No effect.

Q. Mr. Rethier, Mr. Robert Sparling, who is the sales manager of Basic Vegetable Products, Inc., has testified in this case. He testified that his company, Basic, had lost business to your company, Les Pommiers, as a result of the relationship between Gentry and Consolidated. Is that true?

A. No.

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Cross Examination

By Mr. Hays:

Q. Mr. Rethier, I show you Respondent's Exhibit 1623 148. Does that exhibit reflect all of your sales to Consolidated Foods for each of those years on that exhibit?

A. Each date represents a yearly basis.

Q. The exhibit does not reflect your sales in 1959, does it?

A. No.

Q. What were your sales in 1959 to Consolidated Foods and its divisions and subsidiaries?

A. I don't understand the exact meaning of it.

Q. How much were your sales in 1959 to Consolidated Foods?

A. I cannot give you a correct number, because I don't have it with me. I am surprised that that was omitted. We have that in the book.

Q. Can you give me an approximation?

A. Yes. That will be about like the previous year.

Q. In other words, about $7500?

A. Yes. Correct.

Q. What have been your sales so far this year to Consolidated Foods?

A. A little lower.

Q. A little over $7,500?

A. No. A little less.

Q. In 1954, your largest customer was the Francis H. Leggett Company?

A. Yes, sir.

Q. At the present time Consolidated Foods is your 1624 largest customer?

A. Yes, sir.

Q. Between 1954 and the present, have your total sales gone up, down, or have they remained the same?

A. Down.

Q. How much have they gone down?

A. They went down 75 percent.

Q. At the present time how many different customers do you have?

A. We have about a dozen, and we have another dozen who are what we call dormant, if you know what I mean.

Q. I do not know what you mean by dormant. Maybe you will tell us.

A. They are a company who merged. For instance, R. C. Williams bought Meyer Lynch, Jules Weber; they bought Leggett's institutional business. I don't pack for R. C. Williams, because they don't pay. But they are in the

beginning of changing over management, which then automatically I will repack for them.

Q. You will repack for them automatically?

A. Yes, if the new credit is established.

Q. How many separate customers did you have in 1954?

A. About 22, 23. About two dozen.

Q. Did you have any dormant ones in 1954?

A. No.

1625 Q. Did you do the selling for your company to Consolidated Foods for each of the years 1950 to the present?

A. No.

Q. Who did that?

A. A broker.

Q. Your broker?

A. Yes.

Q. Did that broker report to you directly with reference to those sales?

A. Not directly; by special order sheet.

Q. In I believe 1954 you started selling Consolidated Foods your onion soup; is that correct?

A. No.

Q. When did you start selling Consolidated Foods?

A. In 1954.

Q. Did you start selling them any new products after 1954?

A. Yes. Only one.

Q. What was that?

A. Vichyssoise.

Q. When did you start selling them vichyssoise?

A. In 1957.

Q. Were those sales sales made under your own label, or under Consolidated Foods' label?

A. On Consolidated Foods' label.

Q. Who determines the price that you will charge

1626 Consolidated Foods, or the price you will quote?

A. I do.

Q. From 1950 to the present, has Consolidated Foods always accepted your first quoted price?

A. Yes. If it is proper to ask this question, you mean my first price since I begin canning for them, or do you mean the prices now? You see, the price went up twice since 1950.

Q. In other words, you have charged the same price between 1950 and the present except two times, when it went up?

A. Twice it went up, yes. Not two times. I mean when it goes up, it stay up. Not just for one shipment. There is not such a thing.

Q. When did the price go up for the first time?

A. That was in 1953.

Q. That price remained in effect until when?

A. Until 1957.

Q. And it went up again?

A. Again in '57.

Q. Let's turn for a minute to the conversation you had with the government investigator. You have stated what you recall of that conversation on your direct examination. Do you recall the name of the man to whom you spoke?

A. No, I don't.

Q. Can you describe him?

A. He would be the height of that gentleman there,
1627 Mr. Walker (indicating), and maybe a little heavier; dark.

Q. Why did you suspect that Basic Vegetable Products had made a complaint to the government?

A. Because I was not buying from anybody else. He say he was a competitor.

Q. Why did you not suspect that Schoenfeld had made the complaint?

A. For the very reason that Schoenfeld never would amount to anything for anybody to compete with him, and he don't have any product that is dependable.

Q. Why did you not suspect it was Van Loan & Company that made the complaint?

A. That is very normal. I didn't suspect Van Loan since I saw "Gentry" on the barrel after giving my first order to Van Loan.

Q. Didn't you purchase from Van Loan in 1953?

A. No; only spices.

Q. You did not purchase any dehydrated onion from Van Loan in 1953?

Mr. Walker: Let's not confuse the witness, Mr. Hays. It shows on the exhibit. He doesn't have the exhibit in front of him that you are looking at.

The Witness: Yes, I remember. We didn't.

Q. You did not?

A. No.

1628 Q. This is Respondent's Exhibit 149, and it indicates that you purchased 1,415 pounds of dehydrated onion from Van Loan & Company in 1953.

A. I am mistaken in my date. I thought it was 1950 or '51. You are correct.

Q. So you did purchase from Van Loan & Company in 1953?

A. Correct, yes, sir.

Q. How did you happen to make that purchase, Mr. Rethier?

A. I have been buying spices right along.

Q. Do they have a processing plant for dehydrating onion?

A. That I don't know, sir.

Q. Why have you not bought anything from Van Loan since then, that is, any dehydrated onion from Van Loan since then?

A. Since I found out they worked for Gentry, if I wanted Gentry onion, I could buy them from Gentry. But the problem also there is that they didn't give me the same large white flakes.

Q. Have you subsequently found out that Van Loan works for Gentry? Is that what you said?

A. I realized that after, yes.

Q. Are they a Gentry distributor?

A. I don't know.

Q. What do you mean when you say they worked for Gentry?

A. The onion was from Gentry.

1629 Q. That Van Loan had?

A. Yes.

Q. How long has Mr. Gallo been calling on you?

A. Since 1953; '52 or '53. Those things don't enter my mind necessarily, since I am very indifferent as to who comes. So I don't recall.

Q. Did he call at your plant?

A. He always called at my plant.

Q. He always called at your plant?

A. Yes.

Q. Has Mr. Schek called at your plant?

A. Schek?

Q. Yes.

A. From Basic?

Q. No. From Gentry.

A. No. They never come to the plant.

Q. They come to your house?

A. To the house, yes, sir.

Q. How long have you known Mr. Schek?

A. I don't even know what he looks like, so I cannot recall who he is.

Q. What is the name of the Gentry salesman that contacted you last?

A. That was yesterday. I don't know his name. He is only there for a couple of years. I think he has an
1630 Italian name, so it wouldn't be a name like Schek. I think he is an Italian.

Q. Did he call at your plant or did he call at your house?

A. At my house.

Q. With reference to the letter marked Respondent's Exhibit 150, prior to this letter in 1953 had Basic been shipping their onions in short chubby barrels?

A. Yes, they did. Am I allowed to interrupt?

Q. If you would like to explain your answer.

A. They are entirely different. They were taller than Gentry to begin with, but they are not as tall as they are now.

Q. Subsequent to your letter, did Basic ship in short chubby barrels?

A. At the very beginning, sir, yes.

Q. You mean after you wrote them this letter?

A. No. After that they never changed it. They never sent it.

Q. But you continued to buy from Basic even though they shipped in large barrels, tall barrels?

A. I had to. I cannot get credit from no place else.

Q. I didn't hear you.

A. I cannot have no credit from no place else.

Q. Have you ever heard of Consolidated Foods' approved supplier list?

A. Will you repeat your question?

1631 Mr. Hays: Read it back, please.

(Question read.)

The Witness: Never.

Q. Have you since 1950 from time to time sent samples of your product to Consolidated Foods to be tested?

A. They never asked.

Q. Do you know the name of the person at Consolidated

Foods that handles your account, that is, with reference to your sales to Consolidated Foods?

A. I don't know. That is handled by the broker.

Q. I didn't hear you.

A. The broker takes care of that. So I have no way to know it.

Q. Who is your broker?

A. Mr. Livingston.

Q. Where is he located?

A. In Chicago. With the Campbell Company. Mr. Campbell retired. Now it's Mr. Livingston.

Q. That was the name of the company, The Campbell Company?

A. It became Livingston.

Q. How long had they been your brokers?

A. Since 1954.

Q. Who was your broker before 1954?

A. Mr. Schambaugh.

Q. How do you spell that?

1632 A. I wouldn't know.

Q. Schambaugh?

A. Something like that.

Q. Where was his office located?

A. Also in Chicago. I didn't meet him at his office.

Q. The onion that you purchased from Schoenfeld, am I correct in recalling your testimony that this was imported onion?

A. Yes, sir.

Q. What did you use that onion for?

A. I used it for lentil soup.

Q. Does that imported onion differ from the onion that you purchased from Basic or Gentry?

A. Yes. They are too big in width and much cheaper, but I cannot use it for soup.

Q. Why not?

A. Because we have a label on the can which represents large flakes, and this is the way we started and I never changed it.

Q. Mr. Rethier, don't you also have another business, a hotel business of some kind?

A. Yes.

Q. At one time didn't Mr. Gallo spend a vacation at that resort?

A. Yes.

Q. Didn't he bring a party of friends up there who also spent a vacation there?

1633 A. Yes.

Q. By virtue of the fact that he brought some business to you, didn't you feel obligated to buy some dehydrated onion from him?

A. No.

Q. You did not?

A. I don't feel obligated.

Q. Did you tell the investigator that called upon you that by virtue of this fact, that Mr. Gallo had brought some friends to stay at your resort, that you felt obligated to buy from Mr. Gallo?

A. I didn't say I feel obligated. I think Mr. Gallo thought I was going to be obligated. He didn't stay for his vacation with his friends. When he found out I refused to place an order, they left. They only stayed about 40 hours.

Q. Didn't you tell the government investigator that called upon you that because Mr. Gallo had brought some friends up and spent a vacation at your resort, you felt obligated to buy dehydrated onion from Mr. Gallo?

A. No, I didn't state that.

Q. You did not state that?

A. No.

Mr. Hays: That is all we have, your Honor.

Redirect Examination

By Mr. Walker:

1634 Q. Mr. Rethier, Mr. Hays asked you a question about whether you had ever sent samples of your soups to Consolidated. I wonder if you understand that when he uses the word "Consolidated" he means to include Sprague Warner and Reid Murdoch. Have you sent samples of your soup to Sprague Warner and Reid Murdoch?

A. Yes. I also would like to state, with the permission of the court, that I always send a sample when I put out a new soup, if this is what you mean. They didn't take any lately, any new soup.

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1635 Los Angeles, California
October 18, 1960

1636 PROCEEDINGS

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Hearing Examiner Kolb: Let the record show that the witness is recalled as a witness for the Respondent.

LLOYD BELLISIME resumed the stand, and further testified as follows:

Direct Examination—Resumed

By Mr. Walker:

Q. Would you state your full name?

A. Lloyd Bellisime, B-e-l-l-i-s-i-m-e.

Q. Where do you live, Mr. Bellisime?

A. I live at 2726 North Olive Lane, in Santa Ana.

Q. What is your occupation, sir?

A. I am in the food business. I am at the present time president of Standardized Products Company.

Q. In what business is Standardized Products Company engaged?

A. In the manufacture of essential oil, oleoresin pa-

prika. In addition, it does some distributing of some various items.

Q. Would you name the other products that are distributed by Standardized Products Company?

1637 A. Onion and garlic powders, flakes, and some other dehydrated vegetables.

Q. How long have you been with Standardized Food Products?

A. Since the original founding of the company in probably 1956.

Q. Who founded the company?

A. I did.

Q. During what period of time has Standardized Food Products been producing and selling oleoresin paprika?

A. Since its inception in 1956.

Q. During what period of time has it been producing and selling dehydrated onion and garlic?

A. Since the same time.

Q. To what types of customers does Standardized Food Products sell products?

A. To essential oil houses, to manufacturers, distributors, manufacturers of soluble seasonings.

Q. What is an essential oil house?

A. An essential oil house is a type of wholesaler dealing in essential oils or oils from spices—extractives.

Q. Now, how do you sell these products that are handled by Standardized Food Products?

A. In many cases, direct, although here and there I do have some brokers in the country.

Q. Do you presently produce any dehydrated onion
1638 and dehydrated garlic?

A. No.

Q. So, where do you obtain these?

A. From Puccinelli Food Packing Company.

Q. Under what label do you sell?

A. SPC, which is the Standardized Products Company.

Q. Why do you sell dehydrated onion and garlic when you do not produce it?

A. We started selling it originally when we were building Standardized Products. We were putting in the extract plant as a means of helping pay some of the overhead.

Q. Why did you select the dehydrated garlic and onion for the purpose?

A. I was familiar with the items.

Q. Are you associated with any other companies besides Standardized?

A. Yes.

Q. What are those companies?

A. Well, I am associated with Cal-Compack Foods, Incorporated; I am a partner in Cal Foods, a partnership. I am a vice president of the firm called Raybec, Inc.

Q. Is that all?

A. I am a partner in a firm called K. W. Ranney and Associates. I think that covers it.

Q. Do you hold any position with Cal-Compack?

1639 A. I am not an officer of the corporation, although I am on three of their management boards.

Q. Are you a shareholder of that company?

A. Yes.

Q. In what business is Cal-Compack engaged?

A. In the dehydration and merchandising of a line of capsicum products.

Q. Would those capsicum products include chili powder and paprika?

A. Yes.

Q. Through what channels does Cal-Compack market its products?

A. It markets its products through spice houses, distributors, and direct to manufacturers.

Q. Does Cal-Compack have any salesmen?

A. Yes.

Q. How many?

A. It has two direct salesmen.

Q. Does Cal-Compack also use brokers?

A. Yes.

Q. About how many brokers does it use?

A. Somewhere between 20, 25.

Q. In what sections of the country does it sell products?

A. Nationally and internationally.

Q. To what types of customers are the products 1640 sold — the capsicum?

A. I sell to manufacturers, canners, spice houses, spice distributors.

Q. What was the approximate volume of Cal-Compack's sales in 1959?

A. Roughly two and a half million dollars.

Q. Are any former employees of Gentry other than yourself, part owners of Cal-Compack or Standardized Products?

A. Yes.

Q. Who are these, please?

A. Frank Fahrenkamp is a stockholder of Cal-Compack, and in addition, a stockholder of Standardized Products; and Mr. Don Irion is a stockholder in Standardized Products.

Q. What was Mr. Fahrenkamp's position with Cal-Compack?

A. He had charge of the Chicago sales office.

Q. What was Mr. Irion's position with Cal-Compack?

A. Mr. Irion was a chemist, I believe you would call him, in charge of the Los Angeles laboratory.

Q. In what business is Cal Foods engaged?

A. Cal Foods is a partnership engaged in growing the raw material that Cal-Compack manufactures and distributes.

Q. Does it also grow raw materials for Standardized Products?

A. Yes.

Q. Where did you work prior to 1956, when you started Standardized Products?

1641 A. With Gentry.

Q. What was your position with Gentry when you left?

A. Executive vice president.

Q. During what period of time were you executive vice president of Gentry?

A. Somewhere from the time it became a division of Consolidated Foods.

Q. What were your duties as executive vice president, Mr. Bellisime?

A. I had an interest in practically all of the functions of the company, and for all practical purposes, could have been an assistant to the president.

Q. Did your duties include supervision of production activities?

A. In part, yes.

Q. Did your duties include supervision of sales activities?

A. To a certain extent.

Q. What positions did you hold with Gentry prior to the time you became executive vice president — starting at the beginning, please?

A. I originally came to Gentry as a sales representative covering the southwest territory, and then, I came into Los Angeles, again, as a sales representative. I traveled throughout the United States for the company and I eventually became a vice president.

1642 Q. When did you first start working for Gentry?

A. About 1940.

Q. About when did you start acting as sales manager?

A. I am vague as to date. Probably five years or so later.

Q. Did the type of work that you did for Gentry change any during the war years?

A. Yes.

Q. What did you do for Gentry during the war years?

A. During the war years, Gentry became a prime supplier to the War Department, and I spent quite a bit of my time as liaison between our company and the War Department.

Q. Where did you work when you were doing liaison work between your company and the War Department?

A. I was headquartered at the plant in Gilroy.

Q. When did you become vice president of Gentry?

A. Again, I am not sure of the date. It would be a few years after the termination of the war.

Q. Has Cal-Compack dehydrated any onion or garlic, Mr. Bellisime?

A. Yes.

Q. When?

A. Well, when Cal Foods merged directly with Cal-Compack, it would go back to 1956. It dehydrated garlic from that time on and subsequent to then; beginning when, I don't know.

Q. Beginning before you became associated with Cal-Compack?

1643 A. Yes.

Q. Yes. For how many years after you became associated with Cal-Compack did they continue to dehydrate garlic?

A. Up to two years ago.

Q. Why did they stop dehydrating garlic at that time?

A. Principally because more homes were being built in the immediate area, and somewhere along through there, the plant location was taken in by the City of Santa Ana, and so, we had an odor problem.

Q. It was the odor that caused Cal-Compack to stop dehydrating garlic?

A. That's right.

Q. Does Cal-Compack or Standardized Foods have personnel that are familiar with the processing of dehydrating onion and garlic?

A. Well, since the plant has dehydrated garlic, we do have people in the plant who have some knowledge of dehydration of garlic.

Q. Do you have some experience yourself?

A. And I have some experience also.

Q. Do you have people who are familiar with the dehydration of capsicum?

A. Yes, definitely.

Q. Would that experience be helpful in the processing of dehydrating onion or garlic?

1644 A. It would be helpful.

Q. Does Cal-Compack have equipment that would be helpful in the process of dehydrating onion or garlic?

A. Yes.

Q. Will you describe those equipment?

A. It has tunnels, for example, 3-stage tunnels; and it has milling equipment; it has binning; it has raw material handling equipment.

Q. Would the conveying systems that are now used at the Cal-Compack dehydration plant be used for dehydrating onion and garlic?

A. Yes. There probably would have to be some changes made in the equipment, but fundamentally, the equipment is the same.

Q. What about the trays? Would they be usable for dehydrating onion and garlic?

A. Yes.

Q. What about the tray loader and unloader?

A. They would be used, too.

Q. What about the screens and sifters?

A. Yes.

Q. About how many dehydration tunnels does Cal-Compack have?

A. About 24.

Q. Now, Mr. Bellisime, have the principals of Cal-Compack given any consideration to going into the
1645 dehydration of onion and garlic?

A. Yes.

Q. Why have they considered going into the business?

A. You say "Why have they considered going into the business"?

Q. Yes, sir.

A. It was to be a companion item to the capsicum line. We sold to the class of users the company is selling to.

Q. Would many of the same companies that purchase capsicum from you also use dehydrated onion and garlic?

A. Yes.

Q. In your opinion, Mr. Bellisime, is dehydrated onion and garlic an expanding market?

A. I believe so, yes.

Q. Why do you believe it to be an expanding market?

A. Well, I believe it to be a convenience food from many points of view. I believe the items to be a convenience to manufacturers who use the products as a component in finished food commodities. I certainly believe that it is convenience from a housewife's point of view.

Q. What about the institutional area?

A. I think that it is of convenience at the institutional level; and I think there are many reasons why it should be used — standardized quality and ease and convenience of handling, high labor costs. I can think of many reasons why the items should be expanded.

1646 Q. Do you expect the market to continue to expand?

A. I believe it will.

Q. At a rapid rate?

A. I don't know at what rate, but I think it will expand.

Q. Over what period of time has Cal-Compack given consideration to dehydrating onion and garlic on a commercial basis?

A. I am sure from the time I have been there, and even prior.

Q. Have you discussed it regularly?

A. Yes.

Q. In what other ways, other than discussion, that is, have you and the principals of Cal-Compack kept up your knowledge of the business of dehydrating onion and garlic?

A. We have taken trips, for example, in which we have visited some of the production facilities.

In addition, we have discussed the matter with farmers and growers and people who have some part in the — in the production of onion and garlic.

Q. Why has Cal-Compack not already gone into this business, Mr. Bellisime?

A. Well, from our point of view, it's simply a matter of economics. We visualize the cost of the facility is quite expensive and, more particularly, we can do other things with our money. In the final analysis, it pays a greater rate of return.

1647 Q. Has the fact that Gentry is owned and operated by Consolidated Foods Corporation had any effect on the decision of Cal-Compack not to start dehydrating onion and garlic?

A. Not a bit.

Q. In your opinion, Mr. Bellisime, has the ownership and operation of Gentry by Consolidated Foods Corporation hampered, lessened or restricted competition in the production or sale of dehydrated onion, dehydrated garlic, and capsicum?

Mr. Hays: Objection. Calling for a conclusion.

Hearing Examiner Kolb: The objection is sustained.

* * *

1651 By Mr. Walker:

Q. Mr. Bellisime, has the ownership and operation of Gentry by Consolidated Foods Corporation adversely affected the ability of Cal-Compack and Standardized Products to market their onion and garlic and capsicum products?

Mr. Hays: Objection.

Hearing Examiner Kolb: Objection overruled.

A. No.

* * *

1659 Q. Mr. Bellisime, did Gentry gain any dehydrated onion or dehydrated garlic sales as a result of its relationship with Consolidated Foods Corporation after April 1, 1951, and prior to the time that you left Gentry?

1660 A. Not to my knowledge.

Q. Did you, Mr. Bellisime, in the period between April 1, 1951, and the time you left Gentry, have continuous supervision of sales activities of Gentry?

A. I think during that period Gentry had a sales manager and, of course, I did have contact with him. I was not the direct supervisor of all sales.

Q. Did you keep informed through the sales manager and by reading the reports from the field and otherwise, of the sales progress and activities of Gentry during that period?

A. Yes.

Q. Mr. Bellisime, during the period 1951 to 1955 when you left Gentry, did you, in the course of your duties, read call reports from time to time submitted by salesmen?

A. Yes.

Q. To your knowledge, Mr. Bellisime, did any of those

call reports refer to the Gentry-Consolidated relationship in any way?

A. I am not sure I understand that question.

Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows:

"Question: To your knowledge, Mr. Bellisime, did any of those call reports refer to the Gentry-Consolidated relationship in any way?")

A. No.

1661 By Mr. Walker:

Q. Did any of the call reports that came across your desk that you have referred to contain any reference to the so-called practice of reciprocity in any way?

A. Yes.

Q. Did Gentry's sales increase as a result of — I am sorry. Strike the question, please.

What factors do you have in mind in evaluating salesmen's reports, Mr. Bellisime?

A. Well, the salesmen's report, in theory, should present what transpired at the time the salesman made the call, and it should be a factual presentation of the occurrences. They may not always be factual—probably aren't—but, at least, the theory is that they should present a picture of what transpired at the time the call was made.

Q. Did you find, in your work of sales activities, any tendency on the part of salesmen to exaggerate on call reports?

A. Well, I think it's a fundamental nature for all salesmen to exaggerate, as a matter of fact, just like I think it's a buyer's prerogative to tell about anything that he can say to gain a point.

So, salesmen, if they make a sale, they did it at tremendous effort, and if they lost a sale, it's conditions beyond their control.

I think that is more or less accepted as —

1662 Q. Mr. Bellisime, have you had occasion to sample the quality of imported dehydrated garlic from time to time?

A. Yes.

Q. Have you sold any imported dehydrated garlic?

A. Yes.

Q. In your opinion, has the quality of imported dehydrated garlic improved in recent years?

A. Yes.

1663 Q. Mr. Bellisime, did Gentry's total sales of dehydrated onion and garlic increase during the years 1951 to 1955?

A. I don't recall precisely. I would certainly assume they did.

Q. You don't recall as a fact they did or did not?

A. No.

* * *

By Mr. Walker:

Q. Mr. Bellisime, you testified that Cal-Compack did dehydrate garlic over a period of some years.

How was that dehydrated garlic used by Cal-Compack?

A. In manufacturing.

Q. What products?

A. It was blended with chili powder.

Q. It was not sold as dehydrated garlic?

A. No.

Mr. Walker: Your Honor, at this time I would like also to make a formal offer of proof that if Mr. Bellisime

1664 were permitted to answer the question as to whether, in his opinion, Gentry gained any sales of dehydrated onion or garlic as a result of the Consolidated-Gentry relationship, that his opinion would be that they did not.

I wish to put that in the record because the witness did state that he did have an opinion on this subject, and when

the opinion was asked for, the question was objected to and the objection was sustained. I am making this formal offer of proof so the record will be complete as to what that opinion would be if the question were permitted.

Hearing Examiner Kolb: It is in the record as an offer of proof.

I am not sure whether the record shows or not—I believe it does—that my refusal to accept the testimony was because of not having laid the proper foundation for that testimony.

Mr. Walker: May I assume that the record shows—except I can't remember when we went off the record—that I argued in connection with that point, there was as sufficient foundation laid for this opinion testimony as there was for the testimony given by Mr. Sparling on the same subject.

Mr. Hays: As long as we are rehashing, may I say that the Sparling question that I asked was the same type of question that was asked of Farrell.

1665 Mr. Walker: Well, I think for the record—I am sorry, Your Honor, to do this—I think for the record, I should make formally that which I made off the record—that is, move to strike the testimony of Mr. Farrell on the subject of lost sales, the testimony of Mr. Sparling as to lost sales by Basic.

Mr. Hays: Of course, we have to resist the motion because we have relied, in the examination of Mr. Sparling, on this particular rule of the case.

This comes, it seems to me—It is grossly unfair to permit a motion of this kind at this time, after the close of the case-in-chief, where we have already relied upon that specific rule as enunciated when the Examiner overruled my objection of Mr. Farrell's testimony.

Hearing Examiner Kolb: Mr. Hays, you keep insisting that the situation is exactly the same. I have maintained the situation wasn't, but in view of that, I will have to dis-

regard my previous assertion.

We try this case solely on competent, material evidence, and I think the best way out of this is to let Mr. Walker put his testimony on, and I will evaluate it when the time comes.

Objection overruled as to Mr. Hays' statement.

Mr. Hays: In other words, you want to ask him a 1666 question?

Hearing Examiner Kolb: As long as you say this is the same situation, I will go over this record and see which of the evidence is material and so forth.

By Mr. Walker:

Q. Mr. Bellisime, you have testified that you have an opinion as to whether Gentry gained any sales of dehydrated onion or dehydrated garlic as a result of the Gentry-Consolidated relationship.

Would you please state what that opinion is?

A. I don't believe it did.

Mr. Walker: That is all, Your Honor.

Cross Examination

Mr. Hays: Your Honor, I have a document I would like to have marked for identification as Commission's Exhibit 226-A through F.

Hearing Examiner Kolb: Commission's Exhibit 226-A through F marked for identification.

(The documents referred to were marked Commission's Exhibit 226-A through 226-F, respectively, for identification.)

By Mr. Hays:

Q. Mr. Bellisime, I show you Commission's Exhibit 226-A through F. I want you to examine it and tell me what it is, if you know.

A. May I have your question again, sir?

Q. Can you tell me what this is, sir?

1667 A. It is a letter confirming a discussion in reference to setting up a buying specification plan for raw material.

Q. Did you write this letter?

A. I assume I did.

• • •

Q. Did you write that letter?

A. I am sure I wrote it; yes.

• • •

1668 (The documents referred to, heretofore marked for identification as Commission's Exhibits 226-A through F, were received in evidence.)

By Mr. Hays:

Q. In May of 1955, were you vice president of the Gentry Division of Consolidated Foods?

A. If that letter is dated as of that date, yes. I mean, I don't recall specifically without being reminded.

Q. Now, which of the companies that you are presently associated with, have at any time, to your knowledge, produced dehydrated onions?

A. None.

Q. Which of the companies with which you are now associated have, at any time, produced dehydrated garlic?

A. Cal-Compack Foods, Incorporated.

Q. Yes. Do you know how long they have produced dehydrated garlic?

A. It would go back prior to my having been as-

1669 sociated with the company, which would be prior to 1956?

Q. Did they produce any dehydrated garlic in 1956?

A. I'm sure they did.

Q. In what amounts, sir?

A. Probably—in terms of raw material, the equivalent of roughly 30,000 pounds.

Q. Now, did they—did they produce any dehydrated garlic in 1957?

A. I would say yes.

Q. In what amount?

A. Probably about the same quantity.

Q. Did they produce any dehydrated garlic in 1958?

A. No.

Q. Why not?

A. Because of an odor problem.

Q. Of what, sir?

A. An odor problem, and because there were people objecting—I mean, with complaints came to the plant as a result of producing it the year previous; and it was decided the company would produce no more.

Q. Does the dehydrating of onion create an odor problem, also?

A. Yes, sir.

Q. This odor problem arose as more residences began being built around the dehydration facilities?

1670 A. Yes, sir.

Q. Now, which of the concerns that you are associated with sell dehydrated onion?

A. Standardized Products.

Q. Is that the only one?

A. There could occasionally be a sale made by Cal-Compack Foods, Inc. If so, it would be negligible.

Q. What do you mean by negligible?

A. Probably less than a thousand pounds a year.

Q. Now, Standardized Products, I take it, also sells and sold dehydrated garlic?

A. Yes, sir.

Q. Did Standardized Products sell much of these products in each of the years since 1956?

A. Standardized Products has had a full line of onion and garlic products available for sale since 1956.

Q. And they have sold—

A. Yes.

Q. —in each of those years, dehydrated onion and garlic?

A. Yes.

Q. Now, with reference to the dehydrated onion and garlic sales by Cal-Compack—which, I believe you referred to as negligible—where did they get that product which they sold—that is, the dehydrated onion or the garlic?

A. They would either buy it from domestic sources 1671 or buy the material foreign produced.

Q. Do you know where they actually did buy it? Did they buy it from Standardized Products?

A. No, I would say that they bought it from Puccinelli Packing Company in Turlock and from a foreign producer.

Q. Now, when you say "from a foreign producer," which foreign producer are you referring to?

A. Well, specifically, a firm in Japan.

Q. That is located in Japan?

A. Yes.

Q. What is the name of that firm?

A. Sitori-Arai.

Q. Now, am I correct in my understanding that you organized Standardized Products in 1956?

A. With associates; yes, sir.

Q. Now, since 1956, from what sources has Standardized Products obtained its dehydrated garlic?

A. It obtained it from Puccinelli Packing Company and it has also obtained some from Japan.

Q. How much have you obtained from Japan—that is, dehydrated garlic?

A. On what basis? I mean, per yearly, or—

Q. Yes; for each of the years since 1956. Will you just state whether, in each of those years, you purchased any dehydrated garlic from this Japanese source, and how much.

1672 A. Perhaps I am confusing the issue here slightly.

Actually, the letters of credit are open in the name of Cal-Compack, who is incorporated. Standardized Products has done the selling of it.

The quantities involved, I wouldn't be specifically sure of. It probably would be in the neighborhood of roughly 500 to 600 cases per year.

Q. Cases of dehydrated garlic?

A. Yes.

Q. How large is a case?

A. A case contains 60 pounds net, so that would be roughly 30,000 to 36,000 pounds a year.

Q. Now, since 1956, from what sources has Standardized Products obtained dehydrated onion?

A. From Puccinelli Packing Company.

Q. Exclusively?

A. They actually made one sale, I think, from Gentry—or one purchase from Gentry.

Q. Other than the purchases from Puccinelli and the possible purchase from Gentry, you did not purchase any from any other sources?

A. I don't believe so, no; none that I recall.

Q. Now, in 1956, how much dehydrated onion was sold by Standardized Products?

A. It would be a guess. It's a matter of record.

1673 Probably 20,000 pounds.

Q. In 1956, how much dehydrated garlic did Standardized Products sell?

A. I would guess 10,000 or 15,000 pounds.

Q. Now, how much dehydrated onion did Standardized Products sell in 1957?

A. There probably was a slight increase both in onion and garlic in '57.

Q. Could you estimate how much it increased?

A. I would judge somewhere between 5 and 10 per cent.

Q. The outside limit of the increase would be 10 per cent?

A. I would say somewhere in there; yes, sir.

Q. So, in 1957, you would estimate that Standardized Products sold approximately 22,000 pounds of dehydrated onion?

A. I would say somewhere in that range, yes.

Q. Approximately 17,000 pounds of dehydrated garlic?

A. Probably.

Q. Now, what about 1958? How much dehydrated onion—

A. I would judge from that time on, in 1958, '59, and '60, there was little, if any, increase in the amount of material we sold.

Q. So, in each of those years—1958, 1959 and 1960—you sold approximately 22,000 pounds of dehydrated onion, and approximately 17,000 pounds of dehydrated garlic?

A. Mr. Hays, I would judge it is somewhere in that 1674 neighborhood; yes, sir.

Q. Now, in 1960, who were the individuals with Standardized Products that sold dehydrated onions?

A. Principally myself, although a few of our brokers sold some.

Q. Did you also sell dehydrated garlic?

A. Yes, sir.

Q. Do you have any salemen?

A. I have no direct salesmen on a straight salary. I have sales representatives who are working on a commission basis in the form of brokers.

Q. They also act as brokers for a number of other concerns, selling other products?

A. Yes, sir.

Q. Now, in 1960, how many different customers of dehydrated onion did you have—customers for dehydrated onion?

A. I would guess probably 25 to 30.

Q. Twenty-five to 30?

A. Yes.

Q. How many did you have in 1956?

A. Probably about—1956, of course, we started some time in there with nothing. So, how many we had at that time, could be—it would certainly be a smaller quantity.

Q. Now, this dehydrated onion and garlic sold by your company, what type of firms was it sold to? Manu-
1675 facturers of food products, exclusively, or—

A. No; sold to manufacturers of food products, as one type of outlet; and to distributors.

Q. Now, to whom did those distributors sell?

A. They, in turn, will sell to bakers, as a case in point, and to meat plants of one kind or another.

Q. From 1956 to the present, did your company sell any of this dehydrated onion or garlic, which was designed to be used by the housewife in home cooking?

A. No, sir.

Q. Your customers are located throughout the United States, generally, or are they located in some region?

A. My customers on oleoresin paprika are national, and, actually, international. What customers I have on onion and garlic products are located most generally in the west.

Q. Are they located most generally in California?

A. Yes, I would say so.

Q. When you were with the Gentry Division of Consolidated Foods, did you come to know great many of the purchasing agents of the firms that purchased dehydrated onion and dehydrated garlic?

A. You mean of Consolidated Foods?

Q. Yes; their customers.

A. I am sorry, sir. You say "their customers"?

Mr. Walker: I don't understand the question myself, Mr. Hays.

1676

By Mr. Hays:

Q. When you were executive vice president of Consolidated Foods, did you have personal contact with the dehydrated onion and dehydrated garlic purchasers from Gentry?

Mr. Walker: Excuse me. I will object just to clear up the facts.

He was never executive vice president of Consolidated Foods Corporation.

By Mr. Hays:

Q. When you were executive vice president of the Gentry Division of Consolidated Foods, did you contact the customers of the Gentry Division that purchased dehydrated onion?

A. Yes, sir; some of them.

Q. Now, which ones did you contact?

A. Offhand, I don't recall.

I might qualify that a little more by saying that I did some traveling during that period of time on key important customers. In areas where I happened to be, I called on.

Q. Since 1958, your annual sales of dehydrated onion have been, you testified, in the neighborhood of 22,000 pounds.

Now, did you sell to approximately 25 people in 1958?

A. To approximately 25 different firms?

Q. Yes.

A. I would say so, yes, sir.

1677

Mr. Walker: Dehydrated onion and garlic we are talking about?

Mr. Hays: We are talking about dehydrated onion.

By Mr. Hays:

Q. Did you sell approximately 25 customers those 22,000 pounds of dehydrated onion in 1958?

A. I would say so.

Q. What is your average sale of dehydrated onion?

A. It's probably—It's a minimum, generally speaking, of 500 pounds—from 500 to a thousand pounds.

Q. When you commenced operating in 1956—that is, the Standardized Products—did you commence to sell all of these capsicums and onion and garlic at the same time?

A. No, I didn't attempt to sell capsicums at all.

Q. You only attempted to sell dehydrated onion and garlic?

A. I attempted to sell dehydrated onion and garlic, and we commenced laboratory work with the ultimate end of plant designs on the extraction plant to extract oleoresin paprika.

1678 Q. Today, what is the principal product sold by you, moneywise?

A. Oleoresin paprika; and, that is a product we manufacture. That is a product where we have our primary interest.

Q. To what type of purchasers is that product sold?

A. That product is sold to essential oil houses who, in turn, use it in various blends and who sell it, per se. It's sold to food manufacturers and it's sold to manufacturers of soluble seasonings who disburse it on various seasonings to food processors and sausage houses.

Q. When you commenced to sell dehydrated onion and garlic, you started selling that exclusively, is that correct? exclusive of everything else in 1956?

A. We started selling it because it was the only item we had for sale.

Q. What caused you to undertake the manufacture and sale of this other product?

A. That was the original reason that we established Standardized Products. I personally felt that the sale of oleoresin paprika was an expanding market, and that it would be used by more and more food manufacturers.

I also believed that California occupied a position of being the best source of raw material for the production of this oleoresin paprika, so we established Standardized Products because we were interested in oleoresin paprika.

1679 The onion and garlic came in there, principally, because it helped carry some of the cost and some of the overhead while we were getting our plant built.

Q. Is it fair to characterize your onion and garlic business as just a sideline?

A. When we originally started, it was quite important. It was quite important because it represented about the only source of income we had. Our fundamental interest today is devoted to oleoresin paprika, and in my own personal way of thinking, it's a sideline at the present time.

Q. Now, can you tell us the extent of increase of your sales of oleoresin paprika from 1956 to the present?

A. We started it in 1956, and we had no accounts at all, nor any promise of any business; and in terms of sales today, they are running at the rough rate of about 60,000 pounds of 50,000 color units, which is a measure of color unit, per year.

Q. You are running capacity?

A. The plant is running at capacity.

Mr. Hays: That is all I have, your Honor.

Redirect Examination

By Mr. Walker:

Q. Has Gentry ever been a competitor of yours in the sale of oleoresin paprika?

A. Gentry was in the production of oleoresin paprika.

1680 Q. When did Gentry stop selling and producing oleoresin paprika?

A. That, I am not sure of. I would guess more than a year ago.

Q. Were they producing and selling oleoresin paprika in 1956, 1957, and 1958?

A. I would say yes.

Q. Did the Gentry-Consolidated relationship adversely affect your ability to sell oleoresin paprika?

A. Not — No.

Q. Mr. Bellisime, directing your attention to Commission's Exhibits 226-A through F — which is your letter to Mr. Perlitz of May 19, 1955 — about which Mr. Hays interrogated you, isn't it a fact that in this letter you were suggesting to Mr. Perlitz the use of raw material specifications by Consolidated that would include the products manufactured by Gentry?

A. Yes, sir.

Q. Did you ever receive a reply to this letter from Mr. Perlitz?

A. There was a follow-up on this thing. Whether it came by letter or whether it came by personal contact, or by solicitation, with the thought in mind that the plan would not be put into effect.

* * *

1682 LLOYD BELLISIME resumed the stand and testified further as follows:

Mr. Walker: Mr. Reporter, will you pease mark this document as Respondent's Exhibit 151 for identification?

(The papers referred to were marked Respondent's Exhibits 151-A and 151-B respectively, for identification.)

Redirect Examination—Continued

By Mr. Walker:

Q. Mr. Bellisime, I show you a document marked Respondent's Exhibit 151 for identification which purports to be a letter from Stacey H. Gifford of Consolidated Foods Corporation to you, dated September 7, 1955. Would you examine this letter, please?

When you have finished examining it, will you let me know, please, Mr. Bellisime?

(The witness examines the document.)

The Witness: Yes, sir.

By Mr. Walker:

Q. Did you receive that letter during 1955 within a reasonable time after the date that it bears?

A. Yes, sir.

Mr. Walker: I will now offer Respondent's Exhibit 151 for identification into evidence as Respondent's Ex-
1683 hibit 151.

* * *

Mr. Walker: Will you let the record show, Mr. Reporter, that this is one of the documents that was obtained by the Federal Trade Commission investigators at the time of their original investigation of Gentry's files.

Hearing Examiner Kolb: If there is no objection the document will be received into evidence as Respondent's Exhibit 151.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 151-A and 151-B, were received in evidence.)

By Mr. Walker:

Q. Mr. Bellisime, if Cal-Compack should go into onion and garlic dehydration you would build a plant for such dehydration away from Santa Ana and your present location, is that right?

A. That is right.

Mr. Walker: No further questions.

Mr. Hays: A few more, your Honor.

Recross Examination

By Mr. Hays:

Q. During your testimony you discussed the oleo-
1684 resin paprika, is that correct?

A. Yes, sir.

Q. Is there any other kind of paprika other than oleoresin paprika?

A. Yes, there is ground paprika which is an article of commerce that I am sure you are much more familiar with, and that is the material sold as ground goods in consumer packages; gets into the homes as such; and considerable quantity of it is used by manufacturers.

Now, oleoresin paprika is made from this same ground paprika. All I do is by extraction remove the oil which contains the color, and it goes entirely to manufacturing use, and at that point is used in lieu of ground paprika.

In other words, one is the raw material, the ground goods, and the other is the oil extracted from that ground goods.

Q. Now, when you were with the Gentry Division of Consolidated Foods did they product oleoresin paprika as well as paprika?

A. Yes.

Q. And did they sell this paprika as well as oleoresin paprika?

A. That's right.

Q. And does Consolidated Foods still today sell paprika?

A. They sell ground paprika.

Q. But they do not sell oleoresin paprika?

1685 A. No.

Q. Do they still produce oleoresin paprika?

A. To my knowledge they do not.

Q. Did they cease to produce oleoresin paprika while you were with the company?

A. I think it was still being produced while I was with the company.

Q. To what extent was it being produced when you were with the company?

A. In a very, very small way. The equipment was a little more than a pilot plant, and I would say very, very small.

Q. How long had the Gentry Division been producing oleoresin paprika?

A. Only a few years prior to 1955.

Q. Did they ever produce it in any quantity?

A. I think at one time they had some material extracted on a custom basis, but no, I don't think that they ever produced it in any quantity directly.

Q. Would you characterize it as an experiment?

A. You mean what Gentry was producing?

Q. Yes.

A. I would say it was a pilot plant experiment.

Q. Is oleoresin paprika and ground paprika used interchangeably?

A. Yes, they can be.

1686 Q. Do you believe that oleoresin paprika has any advantage over ground paprika?

A. Yes, I do.

Q. And what is that advantage?

A. Well, I think in a number of particular type of food products the color is important to a finished product without the presence of particles of vegetable tissue that naturally is present in a ground paprika. In addition to that, the process of manufacturing virtually produces a sterile product. It is a product that is low in total bacteria, molds, and yeasts, and it becomes an important consideration in certain types of foods.

Q. So your oleoresin paprika is currently in competition with Consolidated's ground paprika?

A. I would say that that is right. I would say that it is

in competition to ground paprika regardless of source.

Q. Who made the decision in Consolidated Foods, that is the Gentry Division of Consolidated Foods, to undertake the production of oleoresin paprika?

A. I think that decision probably was reached by various committee meetings of various people, and I don't think it was any one man's decision.

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1687 CHARLES E. KERN was thereupon called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

• • •

1688 *Direct Examination*

By Mr. Rothe:

Q. Please state your full name.

A. Charles E. Kern.

Q. Spelled?

A. K-e-r-n.

Q. Your home address?

A. 4365 Forman Avenue, F-o-r-m-a-n, North Hollywood.

Q. What is your occupation?

A. I am vice-president of Kern Foods, Incorporated.

Q. How long have you held that position?

A. Since 1940.

Q. And who is president of that corporation?

A. Julius Kern.

Q. What relationship does he bear to you?

A. Father.

Q. This is a family company?

A. Yes, sir.

Q. Where is the company located?

A. 6453 Bandini Boulevard, B-a-n-d-i-n-i, Los Angeles.

Q. What principal products does Kern produce?

A. We pack tomato products, which include catsup, chili

sauce, tomato juice, solid pack tomatoes, jams and
1689 jellies, vinegars, syrups, and fruit nectars.

Q. To whom do you sell your products?

A. We sell retail to chains, wholesalers, jobbers, and Government agencies and institutions.

Q. When you say you sell retail, do you mean that you sell at retail or a retail package?

A. We sell a retail package to the retail store.

Q. And to wholesale grocers?

A. That's correct.

Q. Do you also have an institutional-size package?

A. Yes.

Q. And to whom do you sell that?

A. To institutional jobbers and to Government agencies.

Q. Through what channels do you sell your products? How do you go about selling them?

A. We have our own sales force in the local market, and we deal with brokers in other markets outside of the Los Angeles area.

Q. How much of the United States do you cover in your distribution?

A. Principally we are Southern California, Arizona, Southern Nevada, and Western Texas. We also sell in the Eastern market, New York, Philadelphia, and Chicago; one or two other markets.

Q. Under whose labels do you sell your products?

1690 A. Principally we sell our own Kern label. We also sell several private labels.

Q. What—approximately what percentage of your business is private label business?

A. I would say approximately 10 to 15 per cent.

Q. And the rest is your own label?

A. The rest would be our own label.

Q. How long has Kern Foods been a supplier to Con-

solidated Foods Corporation or any of its divisions and subsidiaries?

A. At least 20 years.

Q. What products has Kern Foods sold to Consolidated Foods?

A. The tomato products, catsup, chili sauce, tomato juice, jams and jellies, and fruit nectars.

Q. Under whose label? Yours or Consolidated's?

A. I believe for the most part Consolidated's.

Q. Approximately how large have been your sales to Consolidated over the past several years?

A. They average approximately $100,000 per year.

Q. And about how large are your total sales to all customers?

A. Approximately 8 million.

Q. What has been the trend of your sales to Consolidated Foods over the years?

A. I would say they are about even.

Q. Fairly steady from one year to the next?

A. I would say so, correct.

1691 Q. In which of the products that you make do you use onion or garlic?

A. We use the onion and garlic in tomato catsup and chili sauce.

Q. In each of those items you use both onion and garlic?

A. Correct.

Q. In what form is the onion and garlic used in tomato catsup?

A. We use the dehydrated powder.

Q. And that is both onion powder and garlic powder?

A. That's correct.

Q. And what form is the onion and garlic that is used in chili sauce?

A. We use principally fresh onion in chili sauce as well as dehydrated onion chips and garlic powder, dehydrated garlic powder.

Q. Do you use any onion powder in chili sauce?

A. I don't believe so.

Q. And what size is the fresh onion that you use in the chili sauce?

A. The fresh onion is purchased in hundred-pound sacks grown generally in this area and is principally a Spanish onion in variety.

Q. What size is it when it goes into the chili sauce?

A. Well, it's put through a small — first a peeler, 1692 and then it is ground into fine chopped particles.

Q. How does it compare in size with the dehydrated onion chips you mentioned?

A. It would be in the same comparison.

Q. About the same size?

A. Yes.

Q. Relatively speaking, do you use more fresh onion chips, if I may call them chips, than dehydrated onion chips in your chili sauce?

A. Yes, that's correct. We use more fresh.

Q. Why do you use more fresh chips than dehydrated?

A. Our formulas are based on fresh, and we feel it is a higher quality product, and we feel it is more economical.

Q. Under what circumstances have you used dehydrated chips for your chili sauce?

A. At times during the year during the canning season, the fresh onions are not obtainable or they are high-priced, so we have used dehydrated onion chips in place of the fresh.

Q. Would it be fair to say that you have used the dehydrated onion chips as a fill-in when the market was too high for fresh onion or when they were not available?

A. That's correct.

Q. Who have been your purchasing agents at Kern Foods since about 1949?

A. In 1949 I believe Joe Guzzardi started.

1693 Q. Spell it please.

A. G-u-z-z-a-r-d-i.

Q. And how long was he the purchasing agent?

A. He remained with us until 1957. We had a man at that time by the name of Bob Lee.

Q. And how long did he remain as purchasing agent?

A. He was with us until early this year.

Q. Who is your present purchasing agent?

A. Phil Woods.

Q. W-o-o-d-s?

A. Right.

Q. Where is Mr. Guzzardi now?

A. He is out of the country.

Q. During these years that we have been talking about, say since 1949, what part did you yourself — what role did you yourself play in purchasing for Kern Foods?

A. I worked with the purchasing agent. The company is small and we do a little bit of everything in management.

Q. Is Mr. Lee still with you?

A. No.

Mr. Rothe: Will the reporter mark this document as Respondent's Exhibit 152 for identification?

(The paper referred to was marked Respondent's Exhibit 152 for identification.)

By Mr. Rothe:

1694 Q. Mr. Kern, you have been handed a copy of Respondent's Exhibit 152 for identification, which is a tabulation of Kern Foods purchases of fresh onion and of dehydrated onion and garlic from Gentry and from Chili Products Corporation for the years 1946 through 1958.

Had in the past with such exhibits, the data on purchases from Gentry of onion and garlic has been taken from Gentry's records through the medium of the Service Bureau Corporation tabulation.

Mr. Kern, has your company purchased dehydrated onion or garlic from any other supplier besides Gentry and Chili Products Corporation?

A. No, sir.

Q. Why has Kern Foods purchased most of its requirements of onion and garlic from Chili Products Corporation over the years?

A. Chili Products is a local Los Angeles concern. They have a local warehouse stock, and it was more advantageous for us to purchase from them. We didn't have to carry a big stock, and we could buy almost on a day-to-day basis.

Q. Did you begin purchasing from Gentry in 1954?

A. Gentry agreed to place a stock in the area, and along about 1954 we decided that we wanted two sources of supply for our dehydrated onion and garlic powder as well as the dehydrated onion chips.

1695 Q. Why was that decision made?

A. In order to have a—two sources of supply.

1696 Q. Why was it important to have two sources of supply for that commodity?

A. We more or less changed the policy of our buying, and wherever possible we went into two or three sources of supply.

Q. For all commodities?

A. Yes, sir.

Q. Looking at Respondent's Exhibit 152, Mr. Kern, how were the figures, exclusive of the Gentry figures, which I have explained,—how were they arrived at?

A. Obtained the accounts payable ledger cards for Chili Products, and I took—the posted amounts in dollars and cents for each year, and figured that the onion and the garlic, based on a cost of 50 cents per pound, and arrived at the figures that are listed on this sheet.

Q. So they represent an approximation for the dehydrated onion and garlic?

A. That's correct. They are approximate.

Q. How about the fresh onion? How did you arrive at the figures under "Fresh Onion"?

A. The fresh onion I did the same. I took the ledger card from our supplier and calculated on the basis of $1.65 per hundred pounds cost and arrived at this quantity of fresh.

Q. And again, that would represent an approximation?

A. It is an approximate figure.

1697 Q. Who computed these figures?

A. I did.

Q. From the ledger cards?

A. Yes, sir.

Q. Were there any purchasing records available to you from which you could have obtained accurate poundage figures?

A. Yes, sir. The figures are available; however, due to a small office and a limited number of files, we have transferred our records prior to 1958 into boxes and have placed them in storage.

Q. Are they readily obtainable? Could you easily have pulled these?

A. Not easily, but they could have been obtained.

Q. Would you make available to Government Counsel the ledger cards on the basis of which you computed the figures on Respondent's Exhibit 152 should they desire to examine them?

A. Yes, sir.

Mr. Rothe: I should like to introduce into evidence Respondent's Exhibit 152 with the comment that as in the past, Your Honor, where no data was available it so states on the form, but where data was available but no sales were made there is a blank on the form.

Mr. Hays: I would like to reserve the right to review these ledger cards, to check on the accuracy, and I

1698 would like to make a further reservation, in the event that we find these ledger cards deficient for one reason or the other, the right to call for the specific records themselves instead of the records from which a computation was made.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit No. 152 subject to correction if found necessary after examination of the underlying data.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 152, was received in evidence.)

By Mr. Rothe:

Q. Mr. Kern, do you know whose onion and garlic is handled by Chili Products Corporation?

A. Yes, sir.

Q. Whose?

A. Basic.

Q. Basic Vegetable Products?

A. Yes.

Q. Mr. Kern, if you will look at Respondent's Exhibit 152 you will see that your purchases of dehydrated onion from Gentry and from Chili Products Corporation both declined in the year 1958. What is the reason for that decline?

A. We developed a new formula for our tomato catsup using a different type of spice. That spice has been 1699 pre-mixed with onion and garlic powder, and we started using it in 1958. In 1959 I believe it was practically a hundred per cent. It already contains the onion and garlic powder along with the other spices.

Q. Who puts that spice mix out?

A. Stange.

Q. Do you know whose onion and garlic is used in the Stange spice mix?

A. No, sir, I do not.

Q. Do you now use and have you used for the past year or so any dehydrated onion or garlic powder other than that which is contained in the Stange spice mix?

A. Yes. I feel we have used some in chili sauce, and possibly a very very small amount in experimental packs that we have made using other types of spicing.

Q. Would you say that since you went into the Stange spice mix most of your onion and garlic usage is represented by the spice mix?

A. Yes. That's correct. Most would be. Possibly 90 per cent, 95 per cent.

Q. Mr. Kern, we have explained to the Hearing Examiner that we have already talked to you about this case, but prior to the time you were contacted in connection with this case had you ever talked to anyone about a relationship of any kind between your sales to Consoli-
1700 dated Foods and your purchases of dehydrated onion or dehydrated garlic?

A. No, sir.

Q. Have you had any communication of any kind on that subject?

A. No. sir.

Q. What effect had the fact that Consolidated Foods is a customer of Kern Foods had on Kern's volume of purchases of dehydrated onion and garlic?

A. Would you restate that, please?

Mr. Rothe: Would you please read the question?

(The reporter read the question as follows:

"Q. What effect had the fact that Consolidated Foods is a customer of Kern Foods had on Kern's volume of purchases of dehydrated onion and garlic?")

The Witness: It has no effect.

Mr. Rothe: That is all.

Cross Examination

By Mr. Hays:

Q. Mr. Kern, who handles the sales of your products in your company?

A. Vern Schauppner, S-c-h-a-u-p-p-n-e-r.

Q. Do you have anything to do with the sales of your products?

A. Yes, sir.

Q. How long have you had anything to do with the 1701 sales of those products?

A. Approximately 20 years.

Q. And what is it that you do in connection with the sales of your company's products?

A. Well, I am in over-all policy at the moment, dating back, say, two or three years. Prior to that point I actually handled the various phases of sales personally such as local sales, sales out of town, brokers, Government agencies.

Q. Did you ever handle any sales of your products to Consolidated Foods?

A. Yes, sir.

Q. When—what did you do in that connection?

A. I contacted the division of Consolidated in San Francisco and made many trips to San Francisco and talked with the buyer and contacted him very frequently on the telephone.

Q. When did this occur?

A. At various times during the past 20 years.

Q. What was the name of the buyer at Consolidated Foods that you talked to in connection with the visits?

A. The present buyer is Bill Mulloy, M-u-l-l-o-y. Prior to Mr. Mulloy was a gentleman that I am afraid I can't remember his name.

Q. How long has Mr Mulloy been there?

A. I would say four years.

Q. Have you ever had anything to do with the sales of

1702 private label merchandise to Consolidated Foods or any of its divisions?

A. Yes, sir.

Q. What, sir?

A. Sold our institutional packs of chili sauce and catsup to the Consolidated Division in San Francisco as well as the Division here in Los Angeles, and have also contacted the Divisions in Chicago, and have also worked rather close with the Division—the Export Division of Consolidated in San Francisco.

Q. Now, I take it you have been selling products with your label on it to Consolidated Foods for quite some time, is that right?

Mr. Rothe: That was not the testimony, Mr. Hays.

By Mr. Hays:

Q. How long have you been selling products with your label on it to Consolidated Foods or its Division—Divisions?

A. I cannot recollect selling products with our label to Consolidated. It's possible we might have sold from time to time with our label, but principally they are private label buyers and everything is sold to them under their label.

Q. In other words, you have sold during the past several years, or at least since 1950, approximately $100,000 worth of private label merchandise to Consolidated Foods in each year since 1950?

1703 A. That's correct.

Q. And you do not sell them any or did not sell them any significant amount of goods, your goods under your label, during that period?

A. That is true.

Q. Do you sell private label merchandise to anyone else?

A. Yes, sir.

Q. Do you sell your own label merchandise to anyone else?

A. Yes, sir.

Q. Would you prefer to sell your products under your own label or under a private label?

A. We have two more or less divisions of our product. One is sold principally through the retail level, and we prefer to sell our own label to the - through the retail channel, but through the institutional c nel it's principally private label proposition, and quite a bit of our merchandise is sold through the institutions, and we do sell buyers, using their label, and we have no set policy on that. We accept private labels as well as ship with our own label when it comes to an institutional pack through an institutional buyer.

Q. Do you sell private label merchandise that is not in an institutional pack?

A. Yes, sir.

Q. And did you sell that type of merchandise to Consolidated Foods?

1704 A. Yes, sir.

Q. Would you prefer to sell merchandise that goes through retail stores, as differentiated from the institutional pack, under your own label or under private label?

A. Merchandise going into retail, yes; under our own label.

Q. Why is that, sir.

A. The packages are small; our runs are large; and it's much more economical to produce a package with our label. It's been packed; it's in the warehouse; it's ready for sale. We have no further expense involved in relabeling that merchandise, so to speak.

Q. Do you advertise your products under your label?

A. Yes, sir.

Q. What is the purpose of that advertising?

A. Well, we're trying to build a consumer franchise and

to sell more products, be competitive in the market, gain more distribution.

Q. You are trying to sell your own brand of products through that advertising, though, aren't you?

A. That is right.

Q. In a certain sense, then, the private label merchandise that you sell to Consolidated Foods which finds its way to the grocery shelf competes with your own label merchandise, does it not?

1705 A. That is correct.

Q. Now, just who did you talk to in Chicago with reference to selling to Consolidated Foods?

A. I can't recollect names at the moment of the buyers that I have contacted.

Q. When was the last time you were in Chicago to sell and contacted someone at Consolidated Foods?

A. It's possibly been several years.

Q. In other words, today you do not know the names of any one you contacted in Chicago to sell your products to, that is that was with Consolidated Foods?

A. The names are not, say, important to me. Their sales are handled on the West Coast, and calls made in Chicago would only be more or less courtesy calls.

Q. What do you mean "courtesy" calls?

A. Well, you have a problem, perhaps, on quality or something of a nature aside from direct purchasing. The purchasing is all done on the West Coast in San Francisco. However, the merchandise is shipped into Chicago, and from time to time, if myself or one of our people is in Chicago, they always make an attempt to call on Consolidated, as well as other of our customers.

Q. What for?

A. Service call. We have a broker in Chicago and we place ourselves at his disposal for one or two days and

1706 we make the calls, whether there is a sale to be devel-

oped not. It is a courtesy call. It is a very necessary function in the food business, particularly in our business.

Q. Does it have the effect of building goodwill with a buyer?

A. That is correct.

Q. That is one of the purposes of it?

A. Yes, sir.

Q. And has it been important to you to build goodwill with Consolidated Foods as a buyer and potential buyer of your products?

A. Yes, sir.

Q. Who was the individual in Los Angeles that you contacted with reference to selling Consolidated Foods your products?

A. They have a local branch that we do quite a bit of business with. We contact them regular through our sales force. Our sales manager handles it. I have not been too active in that end of it here locally. I could not tell you the name of the buyer at this time. Previously they had a gentleman by the name of Ray Young.

Q. Did you contact Mr. Young?

A. Yes, sir.

Q. For what purpose?

A. To sell him products, our products.

Q. And did you contact him for any other purpose?

A. No, sir.

* * *

1707 By Mr. Hays:

Q. When did you first learn that Consolidated Foods also sold dehydrated onion and garlic?

A. Within possibly a few days of the actual acquisition and purchase.

1708 Q. How did you find out?

A. To my recollection I believe I read it in the

newspaper.

Q. Did it occur to you that you might be building good will with Consolidated Foods if you purchased some of your requirements of dehydrated onion and garlic from their Gentry Division?

A. No, sir. Did not occur to me.

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LOUIS J. BLACKSTONE was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Louis J. Blackstone.

Q. L-o-u-i-s?

A. That's correct.

Q. Where do you live, Mr. Blackstone?

1709 A. 13215 South St. Andrews Place, Gardena.

Q. What is your occupation, sir?

A. Purchasing agent, Louis Milani Foods, Incorporated.

Q. How long have you been purchasing agent?

A. Since 1958.

Q. What was—

Mr. Hays: I'm sorry. I missed the company.

The Witness: Louis Milani Foods, Incorporated, M-i-l-a-n-i.

By Mr. Walker:

Q. What was your position before 1958?

A. Assistant purchasing agent.

Q. And for how long did you hold that position?

A. Since 1950.

Q. Where are Milani's general offices located?

A. Los Angeles.

Q. The address, sir?

A. 12312 West Olympic Boulevard, L.A.

Q. Where are Milani's plants located?

A. Los Angeles and Chicago.

Q. In what business is the Milani company engaged, Mr. Blackstone?

A. We manufacture salad dressings, sauces, soup bases, pie fillings, puddings, cobblers, meat stretchers, and other specialty items.

1710 Q. And do you also manufacture and sell low-calorie products?

A. That's correct.

Q. And are your products sold in both retail and institutional sizes?

A. Yes.

Q. Under what label are your products sold?

A. Under the Milani label.

Q. And that is true of all your products?

A. That's correct.

Q. Would you please give us some examples, Mr. Blackstone, of some of your better known products?

A. Milani's "1890" French Dressing, our whole line of salad dressings, barbecue sauces, and our line of low-calorie salad dressings.

1711 Q. To whom do you sell your retail-size products?

A. To wholesale grocers and retail chains.

Q. To whom do you sell the institutional sized items?

A. Institutions such as camps, hospitals, restaurants.

Q. Through what channels do you sell your products?

A. Retail end of the business is done by mostly brokers, and the institutional side is done by direct factory representatives.

Q. Have you, Mr. Blackstone, at our request obtained certain information about Milani's sales to Consolidated Foods Corporation?

A. Yes, I have.

Q. During what period of time has your company sold any of its products to any units of Consolidated?

A. I think since 19— about 1946.

Q. What products have you sold to Consolidated during this period?

A. Our retail products.

Q. Would that include most of your retail sized items?

A. Yes, I believe that would include the whole line.

Q. Have you sold any of your institutional pack items to Consolidated?

A. No, not that I know of.

Q. What has been the approximate volume of Milani's sales to Consolidated in the years 1955 to 1958?

1712 A. Oh, $15- to $17,000 per year.

Q. What is the approximate percentage of your sales to Consolidated to your total sales in the years 1955 to 1958?

A. I'd say less than one-tenth of one per cent.

Q. What has been the trend of Milani's total sales in the years 1950 to date?

A. Up.

Q. And what, in your opinion, have been the reasons for this trend, Mr. Blackstone?

A. Well, I believe we have superior products and a wider variety of dressings, causing increased consumer demand.

Q. And are your products heavily advertised?

A. Yes.

Q. In which kinds of products does Milani use onion, garlic, or capsicum, sir?

A. In our dressings and sauces, soup bases.

Q. Do you use any raw onion or garlic?

A. Yes.

Q. About how much raw onion and garlic do you generally use during the course of a year?

A. About 10,000 pounds of onion. I'd say about 40,000

pounds of garlic.

Q. You also use dehydrated onion and garlic?

A. Yes.

Q. Why do you not use dehydrated onion and garlic exclusively?

1713 A. Well, our laboratory feels, and we feel, that we, under some certain circumstances, get a better product out of the raw item than we do out of the dehydrated item.

Q. Since 1950, Mr. Blackstone, what part have you played in the purchasing of dehydrated onion and garlic for Milani?

A. Well, as assistant purchasing agent, part of my responsibilities as assistant purchasing agent was the buying and selection of the onion and garlic supplier under the supervision of the purchasing agent at that time, and since 1958 the decision has been mine to make.

Q. What was the name of that purchasing agent that you worked with prior to 1958?

A. A Miss Moline, M-o-l-i-n-e.

Q. And what has happened to Miss Moline?

A. Miss Moline passed away in 1958. I believe in October.

Q. You testified, Mr. Blackstone, that Milani has plants in both Chicago and Los Angeles. Do you have centralized purchasing, or is the purchasing done separately at the two plants?

A. It is centralized. All the major policy and decisions are made in Los Angeles.

Q. How, Mr. Blackstone, have you gone about determining your source of supply for dehydrated onion and garlic since 1950?

A. Well, at the beginning of each crop year these
1714 suppliers that are interested in supplying Milani Foods submit representative samples of the crop, and that, in turn, is carefully analyzed by our laboratory who

submits to me a recommendation as to which they feel is the best product in their opinion, and they usually give me a second source of supply; usually two suppliers.

Q. And on onion and garlic to what extent have you followed the laboratory recommendations as to your preferred supplier or your major source of supply and your alternative source of supply?

A. I would say a hundred per cent. I can't think of a case where we have deviated from the lab.

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1715 (The paper referred to, heretofore marked for identification Respondent's Exhibit 153, was received in evidence.)

By Mr. Walker:

Q. Mr. Blackstone, directing your attention again to Respondent's Exhibit 153, and specifically to the column headed "Other Sources," which show purchases of onion in the years 1949, 1951, and 1952, would you please state what those other sources were?

A. As I recall the information, 1949 was purchased from the California Vegetable Concentrates Company in
1716 Huntington Park; 1951 was a combination of California Vegetable Concentrates and the Sokol Company, S-o-k-o-l; 1952 I believe was entirely California Vegetable Concentrates.

Q. Mr. Blackstone, Respondent's Exhibit 153 indicates that you have purchased by far the greater portion of your dehydrated onion and garlic from Puccinelli. Why was that?

A. Well, we feel that Puccinelli puts out a superior product, a superior product to—as are listed here, Basic and Gentry.

Q. To what extent has Puccinelli given you good service, Mr. Blackstone?

A. I would say excellent over the years.

Q. Has that played any part in your purchases from the Puccinelli Packing Company?

A. Yes, it has.

Q. Has price played any part in your purchases from Puccinelli?

A. At times it was a factor. I would say in most cases it was strictly a determination of the lab by quality.

Q. Mr. Blackstone, why have you purchased dehydrated onion from Gentry since 1950?

A. Gentry in these cases has been listed as an alternate supplier, and in some cases Gentry has specialty items in onion that either we find superior to other suppliers or that I would say no other supplier has.

Q. Who do you consider to be your primary source
1717 of supply for onion powder?

A. Puccinelli.

Q. And your secondary or alternative source of supply for onion powder?

A. Gentry.

Q. Now, other than the reasons that you have given for purchasing dehydrated onion or garlic from Gentry, are there any other reasons for purchasing from Gentry?

A. Would you restate that question, please?

Q. Are there any reasons other than those you have given for your purchases of dehydrated onion and garlic from Gentry, Basic, or Puccinelli?

A. No, I can't think of any.

Q. Does onion powder account for most of the volume of your purchases of dehydrated onion?

A. Yes, the great portion.

Q. From what companies, Mr. Blackstone, do you buy your capsicum?

A. Cal-Compack, Chili Products and Gentry.

Q. What has been the approximate volume of your pur-

chases of capsicum from Gentry since 1950?

A. Say a thousand pounds or less.

Q. Per year?

A. Yes.

Q. What amounts of capsicum have you purchased
1718 from the other companies that you named?

A. Our greatest portion is from Cal-Compack which runs about 50,000 pounds a year.

Q. Why have you not purchased more of your capsicum requirements from Gentry?

A. We feel that Cal-Compack has a superior product.

Q. Mr. Blackstone, we have informed the Hearing Examiner that we have discussed this case with the witnesses such as yourself. Before you were contacted in connection with your appearance here as a witness, had you ever talked with anyone about a relationship of any kind between your sales to Consolidated and your purchases of dehydrated onion, dehydrated garlic, or capsicum?

A. No.

Q. Have you had any communication of any kind on that subject?

A. No.

Q. What effect, Mr. Blackstone, has the fact that Consolidated is a customer of Milani's had on the volume of your purchases of dehydrated onion, dehydrated garlic, and capsicum from Gentry since 1950?

A. None whatsoever.

Q. When did you first learn that Gentry was a part of Consolidated, Mr. Blackstone?

A. A couple months ago.

1719 Q. And when did you first learn that Consolidated was a customer of Milani's?

A. At the same time.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. Mr. Blackstone, tell me just how much raw onion and raw garlic you purchased at each of the years that are shown on Respondent's Exhibit 153.

A. May I consult my notes here? I have some notes to the effect that it is broken down by raw product. Which years did you wish?

Q. For the last years that are reflected on Respondent's Exhibit 153, which are 1946 through 1958.

A. Our records start on this in 1949. The controller has made a notation of the fact that the data not available prior to this has been microfilmed and is in storage, so I can give you from 1949 on.

Mr. Walker: Excuse me, Your Honor. Apparently I was under a misapprehension there. In view of what the witness has said now, and this is my fault in the preparation of this exhibit, apparently the fact is that there is no data available from the company on its purchases of dehydrated onion and garlic for any year prior to 1949. Is that right?

The Witness: That's correct.

1720 Mr. Walker: Then I would like to correct the record to show that for the years '46,'47 and '48, under Basic, Puccinelli and other sources, the words "no data" should be inserted. The blanks will remain for Gentry under 1946 and 1947.

So that there can be no misapprehension whatsoever about this, I would like to ask leave to withdraw Respondent's Exhibit 153 at the conclusion of the testimony today and have a corrected exhibit substituted tomorrow morning.

Hearing Examiner Kolb: All right.

(The document heretofore marked Respondent's Exhibit 153 and received in evidence was withdrawn.)

Mr. Walker: Excuse me for interrupting, Mr. Hays.

By Mr. Hays:

Q. Now, do you want to tell me about these?

A. Yes. 1949 our fresh onion was 16,357 pounds; our fresh garlic was 10,536 pounds.

1950, our fresh onion was 14,832 pounds; our fresh garlic was 40,165 pounds.

1951, our fresh onion was 16,309 pounds; our fresh garlic was 38,612 pounds.

1952, our fresh onion was 9,789 pounds; our fresh garlic was 40,402 pounds.

1953, our fresh onion was 8,378 pounds; our fresh garlic 43,424 pounds.

1721 1954, fresh onion was 9,684 pounds; garlic, 45,565 pounds.

1955, onion, 8,365 pounds; garlic, 41,840 pounds.

1956, fresh onion, 5,100 pounds; fresh garlic 41,585 pounds.

1957, onion, 11,153 pounds; garlic, 59,411 pounds.

1958, onion, 11,174 pounds; garlic, 30,737 pounds.

Q. Now, from whom do you buy this raw onion and garlic?

A. In most cases the raw garlic is purchased from Puccinelli and the raw onion is purchased locally from different produce houses such as Northern Product, California Product, et cetera.

Q. Does your laboratory also test the raw garlic that is purchased?

A. That is correct.

Q. Do they test any other raw garlic of any other supplier?

A. Yes, they do const[illegible]y.

Q. What suppliers — what raw garlic suppliers have they tested this year?

A. George F. Martin, up around the Gilroy area. There is two or three suppliers that I can't recall the name off-

hand, but independent suppliers of garlic. Gilroy Foods, Incorporated, up in Gilroy also.

Q. You have tested their raw garlic?

A. Yes.

Q. What determines whether you use dehydrated onion and garlic or fresh onion and garlic?

1722 A. That is a determination made by the laboratory; the way they figure that the product would react to whether it would be dehydrated or raw. We put out an onion and garlic seasoning which is actually a juice, so we have no alternative but the raw — to buy either raw onion or raw garlic and squeeze it and process it for the juice.

Q. Is that what you purchase most of this raw product for?

A. That is correct.

Q. In other words, there is no such thing as dehydrated garlic juice, is there?

A. Not to my knowledge, there is not.

Q. You have to purchase the fresh product?

A. That is correct.

Q. Mr. Blackstone, do you know what the — how many pounds of fresh onion does it take to make one pound of dehydrated onion?

A. I haven't the slightest idea.

Mr. Walker: Off the record.

(Discussion off the record.)

By Mr. Hays:

Q. Now, up until 1958 you were assistant —

A. That's correct.

Q. — purchasing agent?

A. That's correct.

Q. And who was your superior in 19 —

1723 A. Miss Moline.

Q. She was a buyer?

A. She was the head purchasing agent.

Q. And how long was she the head purchasing agent?

A. About—I'd say twelve, thirteen years.

Q. Did she do a lot of purchasing when she was head buyer that you didn't know anything about?

A. Some, but not in the garlic and onion field.

Q. You did all of that purchasing yourself?

A. Under her supervision.

Q. Under her supervision?

A. That is correct.

Q. What is the last time that you tested Basic's dehydrated onion?

A. Basic? Has been some time. I'd say a couple of years at least.

Q. And what is the last time that you tested Gentry's dehydrated onion?

A. Just recently. I believe it was about July or August.

Q. Referring again to Respondent's Exhibit 153, under the other sources for onion, 1949, 1605 pounds, and what was that company that you purchased those—

A. California Vegetable Concentrates.

Q. Do they—did they at that time produce dehydrated onion?

1724 A. Well, I would assume so. I wasn't associated with the company in 1949.

Q. You don't know whether they did or not?

A. No, but I would certainly assume that they did.

Q. Why would you make that assumption?

A. Because they are a very well-known dehydrator.

Q. Where are they located?

A. Huntington Park.

Q. California?

A. That's correct.

Q. Now, what about 1951? 1521 pounds.

A. That was dehydrated garlic.

Q. That was dehydrated onion, I think.

A. I mean onion. I beg your pardon.

Q. Now, from what source did you purchase that?

A. From the California Vegetable Concentrates and a company in Chicago who is also a dehydrator by the name of Sokol.

Q. Do you know whether they processed dehydrated onion in 1951?

A. I'm not sure, but if I recall correctly, they were a jobber of this material. This is some time ago, and I just don't remember. I don't believe they do their own dehydration. I think they job it for somebody.

Mr. Walker: What company are we talking about?

The Witness: Sokol and Company.

1725 By Mr. Hays:

Q. Now, the 2214 pounds of dehydrated onion purchased in 1952 was from what company?

A. California Vegetable Concentrates.

Q. Have you ever tested any California Vegetable Concentrates of dehydrated onion?

A. Since when?

Q. When was the last time you tested it?

A. I haven't had any submitted to me by the California Vegetable Concentrates in four or five years that I can remember.

Mr. Hays: That is all I have, Your Honor.

Redirect Examination

By Mr. Walker:

Q. Why haven't you tested Basic's dehydrated onion in the last several years, Mr. Blackstone?

A. Because it has not been submitted to us by Basic. I don't believe we have to beg for suppliers. If they don't want to take the opportunity to submit it, we don't go out soliciting it.

Mr. Walker: No further questions.

Hearing Examiner Kolb: It that all, Mr. Hays?

Mr. Hays: May I have a minute, Your Honor?

Recross Examination

By Mr. Hays:

1726 Q. When was the last time a Basic salesman called on you?

A. I haven't seen a Basic salesman in—I'd hate to say how long. I would judge it's been at least six months and possibly much longer than that, but I couldn't tell you for sure.

Q. One did come within, say, at least six months ago?

A. I would use that just as a fast—it could have been eighteen months. I just don't recall seeing a Basic salesman for ages.

Q. And—

A. And if one did come in he hasn't asked to see me.

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1728 Los Angeles, California
October 19, 1960

1729 PROCEEDINGS

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1771 MURRY R. WAGER was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rothe:

Q. What is your name, please?

A. Murry R. Wager, W-a-g-e-r.

Q. How do you spell your first name?

A. M-u-r-r-y.

Q. Your residence address?

A. 6431 West 6th Street, Los Angeles.

1772 Q. What is your occupation?

A. I'm co-partner in a wholesale grocery company.

Q. What is the name of that wholesale grocery company?

A. Sunshine Specialty Products Company.

Q. And where is the company located?

A. 1527 Newton Street, Los Angeles.

Q. What is the business of your company, Mr. Wager?

A. We are wholesale grocers to the institutional trade.

Q. And what kind of products do you carry?

A. All types of food products, with the exception of perishables, and supplies that a restaurant might carry, might use.

Q. Is there, because of the nature of your buisness, a particular size of products that you carry?

A. They are what we call institutional sizes. They are larger in general than the size which would appear on a grocery shelf.

Q. To whom do you sell your products?

A. To restaurants and feeding institutions of various types and to other jobbers.

Q. So far as the split in the volume of your business is concerned, do you sell more directly to the users of the products, the institutions themselves, or to other jobbers?

A. I'd say we sell possibly more to other jobbers.

Q. What territory do you cover?

1773 A. Southern California.

Q. And through what channels do you sell your products to these jobbers and institutions? How do you go about selling your products?

A. We have salesmen who call on the institutions direct or the restaurants and hotels direct, and the jobbers—oh, they just purchase without any sales force to speak of at all. We have very little contact with them as far as inducing them to purchase is concerned.

Q. Is this a situation where you stock products and they know it and so they order what they want?

A. That's correct.

Q. Under whose labels do you sell your products?

A. Mostly under packers' labels, with the exception of few products under our own label, which is a carryover of the manufacturing business which we formerly were in.

Q. What is your own label?

A. Sunshine Specialty brand, and that is mostly on condiments and sauces, dressings.

Q. Are those the items which you used to manufacture?

A. That's correct.

Q. When did you cease manufacturing those items?

A. Oh, about nine years ago.

Q. When you say that you sell most of your products under the packers' labels do you mean the labels of

1774 those from whom you buy the products?

A. That's correct.

Q. During what period of time has your company sold any of its products to any units of Consolidated Foods Corporation?

A. Oh, I would probably—I'd say about the last seven or eight years.

Q. And which units of Consolidated Foods Corporation are we talking about here?

A. Monarch Foods.

1775 Q. Located where?

A. In Los Angeles.

Q. Is that the only unit of Consolidated Foods that you have sold?

A. Yes.

Q. Your answer to that is "Yes," sir?

A. Yes.

Q. What products have you sold to Monarch in Los Angeles?

A. Oh, any number of—various products. Nothing in quantity. We regard their purchases from us as being more

or less what we call buy-out purchases, items that they have to have to serve some institution that they don't normally carry themselves.

Q. This is because Monarch in Los Angeles is in the institutional business, that is the business of servicing institutions?

A. I don't know if that is entirely their business, but I do know they service institutions, yes.

Q. And it is for this business that they buy from you?

A. That's correct.

Q. Does your company compete with Monarch?

A. To some—yes, in the—I'm sure that our salesmen sell to the same type of food dispensing places that they call on; various hotels; and also they—Monarch sells jobbers and started quite an active campaign selling 1776 jobbers some few years back.

Q. About when would you date that?

A. Oh, about four or five years ago.

Q. Perhaps to put it in terms that I would understand, Mr. Wager, would you call your sales to Monarch more or less accommodation sales by one company to another, both being in approximately the same business? Is that what you mean roughly by a buy-out?

A. Not necessarily accommodation sales. Their line—they are interested more or less in selling their certain products which they stock, I would imagine, and all the other items, wherever they find it necessary to sell the other items—some accounts insist that you be their complete supplier—why, they will buy those items that they don't carry, they don't stock, from us.

Q. These are purchases, then, to fill out their product line where they have to do so?

A. Yes.

Q. What was the approximate volume of your company's sales to Monarch in 1958?

A. Oh, I think it was $14,000.

Q. And what was the approximate amount of your company's total sales in that same year, 1958?

A. About six and a half million.

Q. What kinds of dehydrated onion and garlic
1777 products do you handle?

A. Will you repeat that, please.

Q. What kind of dehydrated onion and garlic products do you handle?

A. You mean the types or the brands?

Q. The types.

A. We handle powdered and—powdered onion, powdered garlic. We handle garlic—the onion salt, garlic salt, and we handle the flakes and chips of dehydrated onions.

Q. Do you also handle dehydrated onion and garlic combined with any other types of seasonings?

A. Yes. We handle seasoning salt, which I am sure contains one or both of those.

Q. Any other types of products that involve mixing dehydrated onion and garlic with other seasonings?

A. There might be some finished products we handle from manufacturers which contain those, such as chili sauce, which we buy already canned.

Q. From whom do you buy these various items of dehydrated onion and garlic as you have described, exclusive of that which may be contained canned goods or chili sauce?

A. Chili Products Company and Gentry and Heinz.

Q. From whom do you buy your seasoned salt?

A. From Chili Products Company.

Q. What kinds of onion and garlic products do you buy from [Gentry?]

1778 A. By far the great majority is onion chips and onion flakes, although we do carry one or two items in powdered.

Q. Now, do you resell these products that you buy from Gentry in their original container?

A. In their original form, yes.

Q. Under whose label?

A. Under Gentry's label.

Q. Now, what kind of onion and garlic do you buy from Chili Products Corporation?

A. The powdered and the salts.

Q. Exclusively? No chips or flakes?

A. No, we don't buy any chips or flakes from Chili Products.

Q. And do you resell these powders and salts that you buy from Chili Products Corporation in their original containers?

A. Not necessarily. We do some repacking of spices.

Q. When you resell in the original package onion and garlic products that you get from Chili Products Corporation, under whose label do you resell?

A. That which we buy in the small containers we sell under their label, which I think is the Don label.

Q. D-o-n?

A. D-o-n. That which we buy in bulk, then we repack, we sell under our own label, Sunshine label.

Q. Under whose label do you resell that which you buy from Heinz?

1779 A. Under the Heinz label.

Q. And what kind of onion and garlic is it that you buy from Heinz?

A. The flakes and the chips.

Q. When did you first begin to handle for resale onion and garlic powders and salts?

A. I would say about eight, nine years ago. Did you say—

Q. Powders and salts.

A. Oh, powders and salts. I thought you meant chips.

I'm sorry. I'd say about 20 some-odd years ago.

Q. How about the chips and flakes?

A. About eight or nine years ago.

Q. Why did you begin to handle onion and garlic powders and salts about 20 years ago?

A. Well, we went into the spice line, and that's naturally one of the spice items.

Q. At that time, that is 20 years ago when you began to handle onion and garlic powders and salts, from whom did you buy your requirements of those items?

A. Mostly from Chili Products.

Q. Why, then, did you begin to handle onion and garlic chips and flakes about nine years ago or so?

A. Well, there was a demand building up for it and we begin to get requests, calls for it.

Q. From your customers?

1780 A. Yes, and there is an awareness that this was a product which was becoming pretty widely used.

Q. How was this awareness made known to you?

A. I suppose as a result of the promotion that the manufacturers were doing, —

Q. What form —

A. — in the advertising.

Q. (Continuing)—did this promotion take?

A. I would say demonstration at trade shows and calls, personal calls, and advertising in the trade magazines.

Q. Who has made the decisions as to your sources of supply for dehydrated onion and garlic and capsicums since 1950?

A. I have.

Q. From what companies have you purchased dehydrated onion and garlic since 1950?

A. In the powder are you speaking?

Q. In any form. Powder, chips, flakes.

A. Will you repeat that?

Q. From what companies have you purchased dehydrated onion and garlic in any form since 1950?

A. The same two companies, from Chili Products and from Gentry and from Heinz.

Q. The same three companies?

A. Three companies, rather. That is the powder and the chips and the flakes.

* * *

1781 (The paper referred to, heretofore marked for identification Respondent's Exhibit 158, was received in evidence.)

By Mr. Rothe:

Q. Now, Mr. Wager, Respondent's Exhibit 158 indicates you first began to buy from Gentry in 1949. I believe you testified that prior to that time you had bought powdered onion and garlic and onion and garlic salts from Chili
1782 Products Corporation, is that correct?

A. That's correct.

Q. Why did you buy from Chili Products Corporation?

A. Oh, they were a local company. We were very small buyers back 22, 23 years ago, and we found it convenient to buy from them.

Q. You mentioned that at one time you did some manufacturing, up until about nine years ago, was it?

A. That's correct.

Q. In those manufacturing operations did you use any onion and garlic dehydrated?

A. Yes, in the powdered form.

Q. In the powdered form. Did you buy that also from Chili Products Corporation?

A. I would say we did, yes.

Q. Since about 1950 or 1951, Mr. Wager, about what percentage of your total onion and garlic requirements, and by that I mean powder, chips, flakes, everything, have you purchased from Chili Products Corporation?

A. I'd say about 40 per cent probably from Chili Products.

Q. And I believe you testified that you purchased from Gentry only onion and garlic chips and flakes, with a few small exceptions, is that correct?

A. That's correct.

Q. Why did you begin to purchase from Gentry in 1949?

1783 A. I think I stated previously that there seemed to be a demand building up on the chips and flakes, and in the beginning, of course, an item like that we would just handle it as special orders probably, and then when we found we were buying too many specials we decided to stock it and actively go after— build up our sales.

Q. Why did you choose Gentry as your source of supply?

A. Well, we felt that that label had an acceptance.

Q. To whom?

A. (Continuing) I just can't remember the details, but I imagine we checked the— I'm sorry. Did you ask something?

Q. Acceptance to whom?

A. To our customers, to restaurants. I'm sure we must have made comparisons both price-wise and quality-wise, and we decided on Gentry.

Q. Looking at Respondent's Exhibit 158 it appears that your purchases from Gentry have increased over the years since 1949. What accounts for that?

A. Well, sales activity, general acceptance in the trade in the use of dehydrated onion as against preparing from fresh onions.

Q. And this is to the institutional trade?

A. Yes.

Q. When you said increased "sales activity" you meant on whose part?

1784 A. On our part, and of course the promotion on the part of the manufacturers.

Q. Through direct contact with institutions?

A. The same type of promotion that I mentioned previously.

Q. Why have you purchased dehydrated onion and garlic chips and flakes from Heinz?

A. Well, we became a distributor of the Heinz line about four or five years ago, and one of the items in their line is onion chips and flakes, and there is an occasional call for it, so we stock it.

Q. When you say "the Heinz line" do you mean the Heinz institutional line or the—

A. Yes.

Q. (Continuing)—entire grocery line?

A. No, just those items which are salable to institutions.

Q. Now, Mr. Wager, you said that there is an occasional call for the Heinz onion chips or flakes. Comparatively speaking, about how much of your total sales of onion and garlic in any form are made under the Heinz label?

A. Oh, it would be under one per cent.

Q. Is there a reason for this?

A. Well, Heinz price, of course, is higher and we have to get a higher price for Heinz than we do for the others.

Mr. Hays: I think you interrupted. I didn't hear.

Under what, did you say, as to how much you buy

1785 from Heinz?

Mr. Rothe: Read the answer and see how complete it is, will you?

(The reporter read the question as follows:

"A. Oh, it would be under one per cent.")

The Witness: That is one per cent of all our onion. Not of our business, but of the onion and garlic — of the onion product.

Mr. Rothe: Would you then read the last answer before

Mr. Hays interrupted?

(The reporter read the question and answer as follows:

"Q. Is there a reason for this?

"A: Well, Heinz price, of course, is higher and we have to get a higher price for Heinz than we do for the others.")

By Mr. Rothe:

Q. When you say "for the others" you mean who?

A. For the other brands, which in this instance, of course, is Gentry.

Q. Do you know, Mr. Wager, whose onion goes into the pack under the Heinz label?

A. No, I don't. I know there are only probably one or two other dehydrators, and I assume that Heinz is Basic. Now, I might have even talked about that with the salesmen. They are always trying to push their product, of course.

1786 Q. Do you know whose onion — that is, which dehydrator's onion and garlic goes into the material you buy from Chili Products Corporation?

A. I know that that is Basic. Now, whether it is Basic in its entirety or not, I don't know, but I know they are distributors for Basic.

Q. From what companies have you purchased your requirements of capsicums?

A. By capsicums you mean the red spices?

Q. Yes, sir.

A. We buy those from Chili Products.

Q. Do you buy any from Gentry?

A. I would say no. Now, there might be an occasion when somebody wants it under the Gentry label. We sell all the capsicums under our own label.

Q. But occasionally you do have to carry a label other than your own?

A. If somebody requests it we will treat that as a special order.

Q. Now, Mr. Wager, we have informed the Hearing Examiner that we have talked to you about this case, but before you were contacted in connection with your appearance here as a witness had you ever talked to anyone about a relationship of any kind between your sales to Consolidated Foods Corporation, Monarch, Los Angeles, and
1787 your purchases of dehydrated onion, dehydrated garlic, or capsicums?

A. No, I haven't. In fact I question whether anybody at Gentry knows that we buy or we sell to Monarch, and vice versa.

Q. Have you ever had any kind of communication on this subject?

A. Not to my knowledge.

Q. What effect has the fact that Monarch in Los Angeles is a customer of yours had on the volume of your purchases of dehydrated onion, dehydrated garlic, and capsicums from Gentry since 1950?

A. No effect at all.

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1788 Los Angeles, California
October 20, 1960

1789 PROCEEDINGS

* * *

JAMES E. GROOM, was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

1790 *Direct Examination*

By Mr. Walker:

Q. Would you state your full name, please?

A. James E. Groom.

Q. Where do you live, Mr. Groom?

A. 518 Lovell Place, Fullerton, California.

Q. What is your occupation, sir?

A. I'm assistant general sales manager of Hunt Foods.

Q. And that is Hunt Foods and Industries, Inc.?

A. Right.

Q. Where is that company located, sir?

A. 1747 West Commonwealth, in Fullerton.

Q. California?

A. California.

Q. During what period of time have you held the position of assistant general sales manager, Mr. Groom?

A. Since July 1957.

Q. And would you please describe what your duties are as assistant general sales manager?

A. I'm responsible for sales activities on all these products, both domestic and foreign.

Q. Would you please name the various divisions and subsidiaries of Hunt Foods and Industries, Inc.?

A. The Hunt Foods Division; Wesson Oil Division; Glass Container Division, and United Can Division.

1791 Q. And are there any sub-divisions of the Hunt Foods Division?

A. Yes, there are two different sales departments under the Hunt Foods Division, for Ohio Match Products and Snider Foods.

Q. When was the Wesson Oil business taken on by Hunt?

A. It became effective in a merger this year.

Q. Now, in which of these divisions and subsidiaries that you have named do you have sales responsibilities?

A. For the Hunt Foods Division.

Q. And that would include the products of Snider Foods and Ohio Match, is that right?

A. Right.

Q. Would you please name the food plants of the Hunt Foods Division and the types of products that are produced at those plants?

A. We have a plant in Fullerton, California, producing tomato catsup, tomato sauce, tomato juice, peaches, apricots, pork and beans, chili beans, red beans.

A plant in Hayward, California produces apricots, peaches, pears, fruit cocktail, tomato catsup, tomato sauce, tomato juice, tomato paste, tomato puree, chili sauce.

We have a plant in Oakdale, which is nearby, producing about the same commodities; a plant in Toledo, Ohio, producing catsup; a plant in Bridgeton, New Jersey, producing catsup and tomato sauce; a plant in Albion, New York,
1792 producing catsup, and then a match plant in Wadsworth, Ohio.

Q. Do you also produce stewed tomatoes at some of these plants, Mr. Groom?

A. Yes. I overlooked stewed tomatoes.

Q. Did Hunt Foods and Industries, Inc. formerly operate a plant at Murray, Utah?

A. They did.

Q. What products were produced at that plant?

A. Some tomato products, and canned peas.

Q. And when did you dispose of that plant?

A. In 1959.

Mr. Walker: The following questions, Your Honor, to avoid repetition in relation to each question, will relate only to the Hunt Foods Division of Hunt Foods and Industries, Inc., except where I expressly note otherwise; and, as the witness has already testified, the Hunt Foods Division includes Hunt Foods products, the Snider Foods products, and the Ohio Match products.

By Mr. Walker:

Q. To whom do you sell your products, Mr. Groom?

A. To wholesale grocers and chain stores.

Q. That is, retail chains?

A. Right.

Q. Where are those products sold?

A. Well, throughout the United States and abroad.

1793 Q. Through what channels do you market your products?

A. Food brokers, and our direct sales organization.

Q. Under whose labels do you sell your products?

A. The Hunt label, Snider, Pride of the Farm, and matches under Ohio.

Q. During what period of time has the Hunt Foods Division sold any of its products to any units of Consolidated Foods Corporation?

A. Oh, since 1946.

Q. That would be an approximate date, Mr. Groom?

A. Approximately, yes. We began operations about that time.

Q. What products did you sell to Consolidated during that period since 1946?

A. I would say we sold them all of our products at one time or another.

Q. Have you ascertained whether the Glass Container Corporation or the United Can Division sells to Consolidated?

A. No, they do not.

Q. What was the approximate volume of your sales to Consolidated in the year 1958?

A. About $450,000.

Q. And about what percentage of total sales would that be?

A. Slightly less than one-half of one per cent.

Q. Mr. Groom, what has been the trend of the sales

1794 of products by the Hunt Foods Division in the year 1950 to 1960?

A. It has been on the rise all the time.

1795 Q. And what in your opinion have been the reasons for that trend?

A. Well, we attribute it to consumer demand and improved quality. We produce some new products—increased capacities.

Q. And how in your opinion has this consumer demand been created that you have testified about?

A. Well, primarily through the big consumer advertising campaign we have been carrying forward for a number of years, and continued improvements in the quality of our products.

Q. What has been the trend of your sales to Consolidated in the years 1950 to 1960?

A. They've likewise gone up.

Q. And what in your opinion have been the reasons for this increase?

A. Well, I think the same factors would apply as apply to other accounts we sell, as I've already mentioned, and plus the fact that Consolidated have more outlets than they used to have.

Q. Now, Mr. Groom, we have informed the Hearing Examiner that we have talked with the witnesses about this case prior to their testifying. Before you were contacted in connection with your appearance as a witness had you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion, dehydrated garlic or capsicums?

1796 A. No.

Q. Have you had any communication of any kind on that subject?

A. No.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. Mr. Groom, who has been your superior since 1946?

A. Currently it's Albert Crosson. Prior to that it was Lee Miller.

Q. And how long was Mr. Crosson your superior?

A. It's about two years now.

Q. What is his title?

A. General sales manager.

Q. And how long was the other gentleman your superior?

A. Well, when I came in in 1957, in July, he was the sales manager at that time, so it would have been about a year and a half I would guess.

Q. Was he general sales manager?

A. Yes.

Q. How long was he general sales manager?

A. About two years.

Q. When was he general sales manager?

A. About the first of 1957, early part.

Q. And who preceded him as your superior?

1797 A. Well, who preceded him was a man by the name of Erlanger,

Q. What was his title?

A. He was general sales manager.

Q. How long was he general sales manager?

A. Eight or ten years.

Q. Do you recall Mr. Erlanger's first name?

A. Hans.

Q. During the period since you have been assistant general sales manager have you had other selling personnel over which you supervised?

A. Yes, sir.

Q. And just what personnel have you supervised?

A. Well, I supervise all of the sales personnel, which

involves regional managers, district managers, and the men below them, as well as supervising export and Government departments.

Q. Since 1946 has the Hunt Foods Division sold any private label merchandise?

A. No.

Q. Since 1946 have you had anything to do with making the specific sales of your division to Consolidated Foods or to its divisions?

A. I don't know if I understand your question. You mean—"specific"—whether I called on them?

Q. Yes, sir.

A. No, I have never called on anyone of Consolidated.

1798 Q. During the period from 1946 to the present which of your employees have called on Consolidated Foods and its divisions and attempted to sell them products?

A. Well, the way we handle our sales to Consolidated, or any firm like this, is Consolidated has a buying office in, let's say, Kansas City, or a market like this, we have a local broker in that area and he will make the contact with the Consolidated buying office. And the same would apply wherever there are Consolidated buying offices, operating offices.

In Chicago, as an example, we have our own direct sales organization, and they would be calling on—I think they are called Royal Stores in Chicago. And the same would apply to Piggly Wiggly Midwest, and so on.

Q. Do you sell your products to all food chains in the United States?

A. Yes, sir.

Q. Have you sold your products to all food chains in the United States since 1946?

A. Well, I can't be completely certain. I know of all

major chains we have sold since 1946.

Q. Have you sold your products to all wholesale grocers since 1946?

A. Again I'd have to give the same answer. I think all major accounts are buying our products, and have 1799 since 1946, yes.

Q. And do you consider Consolidated Foods to be one of your major accounts since 1946?

A. No, I would say we do not—we have not considered Consolidated as a major account for us.

Q. Do you consider Consolidated Foods a good customer?

A. Yes.

Q. To your way of thinking is one half of one per cent of your total sales a substantial amount of sales to one customer?

A. Well, I wouldn't say it was substantial.

Q. Are there concerns that you have sold less than $450,000 per year to since 1946?

A. Yes, sir.

Q. Do you have any idea of the approximate number of such concerns?

A. Well, we sell probably 8,000 to 10,000 accounts in the United States, so I wouldn't be able to estimate, I don't believe, how many of them fall in this category. But certainly the big majority of them fall in the below $450,000 class.

Q. How many accounts can you name that have purchased more than $450,000 annually in 1959?

A. Well, I would just have to start naming them.

Q. Yes.

• • •

1803 By Mr. Hays:

Q. How many customers can you think of, not by

name, but by number, that purchased more than $450,000 per year in 1959?

A. I believe there are 25 or 30 such customers.

Q. Now, tell us, insofar as your largest customer is concerned, how much that customer purchased in 1958, without naming the customer?

* * *

1807 The Witness: About $10,000,000.

By Mr. Hays:

Q. And that's the leader of these 25 customers at the top, is that right?

A. Yes.

Q. Now, of those 25 customers that you referred

1808 to, how many of them purchased more than $1,000,000 in 1958?

A. That's a difficult question to answer without having the list of all of our accounts. Again I would just have to estimate: Fifteen.

Q. And of those 15, how many purchased over $2,000,000 in 1958?

* * *

1809 The Witness: Three or four.

Mr. Hays: That's all I have, Your Honor.

1810 *Redirect Examination*

By Mr. Walker:

Q. First, do I understand that your superiors, that is, the general sales managers whom you identified on cross examination, are the gentlemen who are in charge of sales activities for all of Hunt Foods and Industries, Inc., is that right?

A. Yes, sir.

Q. And you have responsibility for the Hunt Foods Division, is that right?

A. I beg your pardon, this is not correct. The men re-

ferred to are responsible only for the Hunt business as we've outlined in earlier testimony.

Q. I see. Mr. Groom, would you please state for the record, because the question has been raised, what you meant when on cross examination you characterized your company's sales to Consolidated Foods Corporation as not being in your opinion substantial?

A. Well, it probably comes from the fact that we have never lumped together Consolidated Foods' purchases in our IBM sales records.

We considered Piggly Wiggly Midwest as a separate entity and operating as it wanted to, presuming that if they wanted to buy our products they would buy them. So we have never lumped together Consolidated purchases in any fashion.

1811 We do consider a lot of other accounts, where central buying is done and group purchasing is done, as major accounts. We have never looked to Consolidated as one place where purchasing would be controlled for all their branches. We have handled it, as I indicated earlier, on an individual basis, we have never lumped them together.

Mr. Walker: That's all.

Recross Examination

By Mr. Hays:

Q. Well, you lumped them together for purposes of your testimony and determined that they purchased approximately $450,000 annually.

Now, after you have lumped them together that way mathematically don't you consider that to be substantial?

A. Well, perhaps.

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JOHN H. DAVIES, was called as a witness by and
1812 on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. John H. Davies.

Q. Where do you live, Mr. Davies?

A. 2571 Crestview Drive, Newport Beach.

Q. What is your occupation, sir?

A. Director of purchasing for Hunt Foods and Industries.

Q. What are your duties as director of purchases?

A. As director of purchases I buy materials, raw materials, for the corporate operation.

Q. Do you have responsibility over all purchasing?

A. That's correct.

Q. Does that responsibility include all plants of Hunt Foods and Industries, Inc.?

A. It does.

Q. Where is your office located at the present time?

A. Fullerton, California.

Q. And was there a time when it was located elsewhere?

A. Prior to the middle of 1958 it was located in Hayward, California.

Q. During what period of time have you held the position of director of purchases?

1813 A. Since January 1, 1956.

Q. Mr. Davies, in which of the products of Hunt Foods are dehydrated onion and dehydrated garlic used?

A. Catsup, sauce, pork and beans, stewed tomatoes, and various other tomato products.

Q. In which of the products of Hunt Foods are capsicums used?

A. Capsicums are used basically in most of the products that I have mentioned.

Q. And at which of your plants are those products produced?

A. Fullerton, California; Hayward, California; Oakdale, California; Toledo, Ohio; purchased in New Jersey; Albion, New York.

Q. Did Hunt Foods formerly produce any of these products at the plant at Murray, Utah?

A. They did.

Q. Do you enter into contracts for your requirements of dehydrated onion and garlic?

A. I do.

Q. And which of your plants do these contracts cover?

A. They cover all the plants mentioned that pack tomato products.

Q. That is all the plants that use dehydrated onion and garlic?

A. That's correct.

1814 Q. How does each plant obtain its requirements of dehydrated onion and garlic physically?

A. The requirements for our annual pack are determined on the West Coast. The contracts are negotiated on the West Coast. And then shipments are made as directed by the West Coast purchasing office to the various plants nationally that are packing these tomato products.

Q. And for how many years has that practice been followed?

A. Oh, since at least 1946.

Q. What period of time do these contracts for your requirements of dehydrated onion and garlic cover?

A. One year.

Q. And who has signed those contracts on behalf of your company since 1956?

A. I have.

Q. Who has made the final decision as to sources of supply for dehydrated onion and garlic for your company since 1956?

A. I have.

Q. From what companies did Hunt Foods purchase its requirements of dehydrated onion and garlic in the years 1946 to 1958?

A. Basic and Gentry.

1817 (The paper referred to, heretofore marked for identification Respondent's Exhibit 159, was received in evidence.)

Mr. Walker: For purposes of clarification, Your Honor, and Mr. Hays, I will be covering with this witness only events relating to purchasing activities since 1955, that is, in the years 1956 and after, since that is the period of 1818 time in which he held the position of director of purchases.

By Mr. Walker:

Q. Mr. Davies, directing your attention to Respondent's Exhibit 159, which you have in front of you, this shows that you purchased dehydrated onion and garlic from both Gentry and Basic in the year 1956. Why was that?

A. Well, during the year 1956, being my first year in this position, I relied to a good degree on the performance and service of the suppliers that Hunt had used previously. We also found that the quality of Gentry's material was equal to Basic. We decided we had sufficient volume and we preferred to have two sources of supply where prices were equal and quality was equal, and we placed our business on that basis.

Q. Why then, Mr. Davies, were most of your requirements purchased from Basic in 1957?

A. In 1957 we found that Basic was offering what appeared to be—what was at the time—a more competitive priced product of equal quality, and as a consequence we agreed to give Basic a good portion of our requirements, giving Gentry some 20 per cent—basically as a result of

their previous services. But the 1957 purchases were primarily bought on a price basis.

Q. And when you say that Basic gave you a more competitive price, you mean a lower price, is that right?

1819 A. A lower price.

Q. Why did you divide the business between Gentry and Basic in the proportion shown on Respondent's 159 in 1958, that proportion being roughly 60-40 in favor of Basic on the onion, and about equal on the garlic?

A. 1958 prices quoted on new crops were very comparable. Having a desire to have more than one source of supply, we decided to give Gentry a more substantial volume than they had in the previous year, knowing that even though it was not equal to what we were giving Basic, we would buy capsicums from Gentry which would build the dollar volume to an equal point.

Q. Now, Mr. Davies, are there any reasons other than those you have given for your purchases of the dehydrated onion and garlic from Gentry in the years that you have been director of purchases?

A. There are none.

Q. Mr. Davies, we have informed the Hearing Examiner that we have talked with the witnesses about this case. Before you were contacted in connection with your appearance as a witness, had you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and purchases of dehydrated onion, dehydrated garlic or capsicums?

A. Absolutely not.

Q. Have you had any kind of a communication on that subject?

1820 A. None whatsoever.

Q. During the years that you have been director of purchases what effect has the fact that Consolidated is a customer of Hunt Foods and Industries, Inc. had on the

volume of your purchases of dehydrated onion, dehydrated garlic and capsicums from Gentry?

A. It had none. None whatsoever.

Q. Do you have a laboratory, Mr. Davies, that you use in connection with your raw materials?

A. We do.

Q. What part does that laboratory play in your decisions as to purchases of those raw materials, including dehydrated onion and garlic and capsicums?

A. Well, prior to making any decision as to sources of supply for this type of commodity samples are submitted to the laboratory for testing. The results of the laboratory's findings are passed on to us, and approvals are given to us by the laboratory as to which items can be considered before we enter into negotiations.

Q. Has your laboratory tested the dehydrated onion and garlic produced by Gilroy Foods, Inc.?

A. Yes, they have.

Q. And was their quality acceptable?

A. Very much so.

Q. Do you plan to purchase any dehydrated onion
1821 and garlic from Gilroy Foods, Inc.?

A. We do.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. How much do you plan to purchase from them?

A. I would say probably 8 or 10 per cent of our requirements.

Q. And do you plan to take that equally out of the normal share of Basic and the normal share of Gentry?

A. That's correct.

Q. Why are you going to have a third source of supply?

A. Well, in purchasing it is highly advantageous to en-

courage competition. It's an inherent part of our operation. If quality and service can be provided, obviously we would like to develop competitive sources of supply.

Q. Well, you don't plan to buy anything from Gilroy Foods if their price isn't competitive, do you?

A. I said if the price is competitive, if the quality is competitive, and if the service is there we obviously will encourage competition.

Q. But you don't know what that price is going to be, do you?

A. Yes.

Q. You do?

A. Yes.

1822 Q. For the next year?

A. Not next year.

Q. For what year?

A. This year.

Q. Have you purchased any this year?

A. I am sure that one order has been placed.

Q. In what amount?

A. This I can't answer. I don't personally place these orders. I give authorization that they can be placed. I don't know exactly what amount has been bought.

Q. In 1956 did you place any orders?

A. Personally, no.

Q. I direct your attention to Respondent's Exhibit 159 and ask you whether or not in 1957, with reference to the 56,500 pounds of onions purchased from Gentry, whether you purchased that at a higher or lower price than the price quoted by Basic or the same price?

A. We purchased it at a somewhat equivalent price. I can't remember exactly what the difference was. If my memory serves me correctly, it was perhaps slightly higher, but it was within the range of acceptability.

Q. Would that statement hold true for dehydrated gar-

lic purchased in 1957 by your company from Gentry?

A. That would hold true.

Q. It was at a slightly higher price?

1823 A. I would say it could be slightly higher. Occasionally there are variations in prices. Sometimes prices come out equal. But the price, if there was any price differentiation at the time we made our purchase from Gentry, it certainly was an acceptable price level.

Q. What was an acceptable price level in 1957?

A. I would say within one per cent, one and a half, or two per cent of competition.

Q. Did you also have an annual contract with Gentry for 1957?

1824 A. I can't be specific on that point. I'm inclined to think that, due to the limited volume, we did not buy under contract, but we merely placed a purchase order,

Q. Mr. Davies, I notice the figures for 1959 do not appear on Respondent's Exhibit 159. For the year 1959 how much dehydrated onion did you purchase from Gentry?

A. I cannot give you that answer in pounds. I wouldn't have it in my memory.

Q. How much garlic did you purchase from Gentry in 1959?

A. I'm sorry, I can't give you that information. I wouldn't have any reason to memorize it. If you would be satisfied with this, I believe that the division of purchases between Basic and Gentry in the years 1959 and 1960 are comparable to the purchases in 1958, and perhaps 1956, the division being approximately 60 per cent to Basic and 40 per cent to Gentry.

Q. What was your position prior to 1956?

A. I was purchasing agent for the United Can and Glass Division of Hunt Foods.

Q. You didn't purchase any dehydrated onion and garlic during that time?

A. That had nothing to do with the Food Division whatsoever.

Mr. Hays: That's all we have, Your Honor.

Redirect Examination

By Mr. Walker:

1825 Q. Mr. Davies, I would like to ask you just one more question.

You have referred to two methods of obtaining your requirements of dehydrated onion and garlic, one by a contract covering your requirements and one by the placing of individual purchase orders as you stated you may have done with Gilroy Foods, Inc. and probably did with Gentry in 1957.

Is there any level of amount of purchases where you stop using purchase orders and commence negotiating and signing contracts on an annual basis?

A. Yes. If it is known that we are to buy a substantial volume of an item it can be negotiated for on an annual basis, pre-season. We will negotiate it on a contract and sign a contract agreement. If we have an occasion to make a spot purchase, or several spot purchases, we would then use the purchase order.

Q. And so the record will be clear, Mr. Davies, looking at Respondent's Exhibit 159, all your purchases of dehydrated onion and garlic from Gentry and Basic as shown on this exhibit, with the exception of the purchases from Gentry in 1957, are by contract?

A. Correct.

Q. And the only purchases in the years 1956, 1957 and 1958 shown on Respondent's Exhibit 159 that are by purchase order are those probably you said, I believe, from Gentry in 1957?

A. Correct.

1826 IRVIN A. GOLDOFT, was called as a witness by and on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Irvin A. Goldoft.

Q. What is your occupation, Mr. Goldoft?

A. Southern area purchasing agent for Hunt Foods Industries.

Q. Now, Mr. Goldoft, who negotiated the contracts for Hunt's requirements of dehydrated onion and garlic in 1954?

A. I did usually.

Q. Mr. Goldoft, Respondent's Exhibit 159, which you have before you, shows that Hunt purchased dehydrated onion and garlic exclusively from Gentry in the year 1954. Why was that, Mr. Goldoft?

A. Gentry offered Hunt Foods a price lower than Basic, and for that reason we figured that, as our quality control approved Gentry's samples of onion powder and de-
1827 hydrated garlic, and also basically approved the both samples, consequently it was just a question of price. As Gentry's was lower, we thought we would give them the business; and we did.

Q. Now, are you familiar, Mr. Goldoft, with the circumstances surrounding the decision to divide the onion business between Gentry and Basic in 1955?

A. In 1955 it seems as though Basic came in, and Gentry, on a competitive basis. Their prices were equal, and consequently we divided the business closely for the reason, as Mr. Davies stated before, of two suppliers. Also Gentry saved us quite a bit of money in 1954, and they were entitled on an equal basis to be in the picture.

Q. And were you satisfied with Gentry's product and service as provided in the year 1954?

A. Yes. Very good.

Q. Are there any other reasons you know of, Mr. Goldoft, for your purchases from Gentry in 1954 and 1955 of dehydrated onion and garlic?

A. No other reason.

Q. Mr. Goldoft, before you were contacted in connection with your appearance as a witness in this case had you ever talked with anyone about a relationship of any kind between your company's sales to Consolidated and your purchases of dehydrated onion, dehydrated garlic or capsicums?

1828 A. No, sir.

Q. Have you had any kind of a communication on that subject?

A. No, sir.

Q. What effect has the fact that Consolidated is a customer of Hunt Foods and Industries, Inc. had on the volume of your purchases of dehydrated onion, dehydrated garlic and capsicums from Gentry in the years 1954 and 1955?

A. None.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. What was your position in 1953?

A. Purchasing agent, Hunt Foods, Fullerton.

Q. What was your position in 1952?

A. Same.

Q. What was your position in 1951?

A. Same.

Q. What was your position in 1950?

A. Same.

Q. During the period from 1950 to 1955 who was your superior?

A. Irving Goldfeder.

Q. What was his title?

A. He was vice president of Hunt Foods. He is executive vice president now. At that time I believe he was vice president.

1829 Q. During the period from 1950 through 1955 were you authorized to purchase dehydrated onion and dehydrated garlic from any source of your own choice?

A. I started buying onion and garlic in 1954. Before that I did not buy it. Before 1954 another party handled this.

Q. Who handled that?

A. A party by the name of Bert Lowen I believe negotiated that.

Now, I know he negotiated that in 1953, and I believe in 1952 and 1951—in that period. How far beyond that I don't know. But in that period. And he also reported to Mr. Goldfeder.

Q. In 1954 were you authorized to purchase dehydrated onion and dehydrated garlic from any source that you might choose?

A. Yes.

Q. And in that year your company had no approved sources of supply for the products that they purchased?

A. At that time there were two sources that we considered could handle the volume we needed, and that was only two sources, Basic and Vegetable. At that time I knew of no other sources who were in the field that we even considered approving by our laboratory for our use. They were the two biggest, and those were the two concerns we contacted only.

Mr. Walker: Excuse me, may we correct the witness' answer? He said "Basic and Vegetable—"

1830 The Witness: Basic and Gentry. Those were the only two we considered even.

By Mr. Hays:

Q. Now, in 1954, when you negotiated the contract with Gentry, were you aware of the fact that for the four years previous to 1954 the total purchases of onion and garlic for your division had been from Basic?

1831 A. It's been some time ago. I didn't give it much thought. I do not know. I did not handle it. I may have covered it by a purchase order, but it was simply one of those things I covered, do you follow, or I did not negotiate or handle the deal. But I think it was Basic, although I don't know.

Q. Who did you negotiate the contract with?

A. With Gentry?

Q. Yes.

A. I believe it was a party by the name of, if my memory serves me correctly, Clausen. I believe that was the man.

Q. In 1954, before you took on Gentry as a supplier, did you have their products tested in your laboratory?

A. Before 1955?

Q. No, before you signed this contract with them.

A. Oh, yes.

Q. Their products were tested in your laboratory?

A. Oh, yes. Yes. See, we're not allowed to buy any condiments whatsoever unless our laboratory okayed and approved the products.

Q. Now, did you also test Basic's products at about the same time?

A. Yes. We tested them every year.

Q. And what were the laboratory findings with reference to that particular testing?

A. The laboratory findings were that we were free

1832 to buy either Gentry or Basic.

Q. For 1954?

A. Both on the approved list, right.

Q. And you stated that Gentry quoted you a lower price?

A. Right.

Q. Now, what was that price?

A. I do not remember.

Q. How much lower was the Gentry price than the Basic price?

A. I don't remember the exact figures. I would just be guessing if I told you. It was lower. I would say this—I would just be guessing if I told you,—but it wasn't any two-tenths of a per cent, it was over a penny or two or three pennies a pound. That's just from my memory, right? But it wasn't a minute—it was substantial with the volume we used.

Q. In other words it was two or three cents a pound lower?

A. I'm just guessing. I do not have the exact figures now. It's been so long ago.

Q. Had you ever met Mr. Clausen before you negotiated this contract for 1954?

A. I believe he made routine calls. I believe so.

Q. On you personally?

A. Yes.

Q. And when did he make those calls?

1833 A. While I was in my office. I think it was a routine call, but it's been—

Q. What year?

A. Now, this is all from my memory. I mean, I couldn't —I just don't remember, because it's so long ago. I would say that the time I knew him was when he called on me in 1954, and I probably met him before that, in 1953. I don't know. I just can't remember.

Q. Well, how did you know him? Do you recall how you first met him?

A. Well, I knew him because he came in my office and I met him, and I knew his name, but the exact time I don't remember.

Q. What did he come in the office for?

A. He was calling on me, representing Gentry, for the sale of onion and garlic powder.

Q. Did he call on you in 1953?

A. That's what I don't remember, whether that was the first time or not. I don't remember.

Q. You didn't handle any purchases of dehydrated onion and garlic in 1953, did you?

A. No.

Q. Well, why would he call on you in 1953?

A. Because in purchasing, lots of salesmen call on me, even though I don't handle it. Even now, today, I have 1834 salesmen call on me that—for example, contracts are negotiated by other people in purchasing, but they call on me, and I would know them that way, you see.

Q. In other words, it's customary for salesmen to call on you when you are a buyer, even though you don't actually do the purchasing?

A. They call on me because sometimes they don't know what I buy, or if I buy everything, or what; or they call on me as a courtesy call due to the purchasing organization.

Q. Just what did you buy in 1953?

A. In 1953 I bought for Hunt Foods in Fullerton—I bought steel, hardware, all the maintenance and repair items for the plant, including certain condiments, office equipment, office supplies, stationery—just hundreds of items.

Q. What do you mean—well, what food product items did you buy in 1953?

A. Pork fat backs, for our pork; I believe I bought chili pepper, paprika, corn starch. Those are a few of the items.

Q. Did you normally handle those items in 1953, chili

pepper and paprika?

A. Yes, those items I handled.

Q. In addition to the steel and—

A. In addition to the steel and the hardware, and all that.

Q. In what area did you do the major part of your buying? The steel and the hardware, office equipment?

1835 A. It was—yes, all of that. The general maintenance, all the items were bought through my office. There were exceptions at the time in 1953.

Q. Was dehydrated onion and dehydrated garlic bought through your office?

A. That was bought through, as I said, Bert Lowen. Mr. Goldfeder signed the contract, he handled that particular two items which was an exception to the rule. All the other items I purchased. He bought that.

Q. Did you consult Mr. Goldfeder before you signed the contract for the purchase of onion and garlic for 1954?

A. Yes. He signed the contract.

Q. He signed the contract?

A. I went to him and told him about Gentry with the lower price, and Mr. Goldfeder signed the contract.

Q. What was Mr. Goldfeder's first name?

A. Irving.

Q. Now, what individual in Basic Vegetable Products Company quoted you their price for 1954?

A. In 1954 Bert Lowen was handling the contract, until the time—in other words, Basic quoted Bert Lowen, then Gentry came to me with a lower price.

Q. You say Gentry quoted you?

A. Gentry quoted me, and Bert Lowen received the quotes from Basic. Then I requested the prices from

1836 Bert Lowen on what Basic quoted. Then we compared the two and found out that Gentry's were lower. Then, I went to Mr. Goldfeder, and Mr. Goldfeder said, "Okay,

you have a lower quote from Gentry, the contract hasn't been sent to Basic yet," which we were protected, and that was it.

Q. Now, am I correct in my understanding that Gentry did not quote Mr. Lowen a price at this time, but quoted you a price?

A. I don't know whether they quoted Mr. Lowen or not. All I know, they came to me and quoted me.

Q. Now, Mr. Goldfeder was your superior?

A. Right.

Q. In 1953 and 1954?

A. Right.

Q. Now, what did he do?

A. He was vice president—I think at that time that he was vice—he was the head of the whole operations division.

Q. Did he do any selling?

A. I don't think he did any selling.

Q. Did he supervise sales?

A. I think he was mostly in the operating, in other words, the manufacturing division, you know, and so forth.

Q. Well, what was his title?

A. He was vice president.

Q. Of the company?

1837 A. Of the company. I believe that was his title at the time. But he was in charge of purchasing. That was one of his functions. The other duties of Mr. Goldfeder at the time—I believe he had charge of the operating and overall picture, you know. Now, how far that went I don't know.

Q. And in the course of the negotiations which preceded the dehydrated onion and garlic contract for 1954, did you talk with anyone else from Gentry other than Mr. Clausen?

A. If my memory serves me correctly it was just the one contact, and I believe it was Mr. Clausen. I believe it

was, now. I believe it was Mr. Clausen.

Q. One contact by him?

A. And he was the man who gave me the prices, and that's all there was to it,

Q. Just one contact by Mr. Clausen?

A. As far as my memory serves me. There may have been somebody . . . I don't remember. He is the only one I remember. I remember talking to somebody from Gentry, a salesman, and I believe it was Clausen.

Q. Did anybody from Basic contact you after you signed this contract and attempt to find out why you didn't buy anything from them for 1954?

A. I don't remember how long after we signed the contract, but Basic's people periodically call on us, and I
1838 did talk to them afterwards, because—but I don't remember when.

Q. Do you remember whom you talked to?

A. There was a fellow by the name of Sparling, is one man that I have talked with in Basic.

Q. Did you talk to him after you gave Gentry this contract?

A. And when I talked to him, I don't remember.

Q. Do you remember what you said to him shortly after that—the first time you saw him after this contract was signed with Gentry?

A. I don't remember the conversation or anything. I just don't remember. I'm not trying to hide anything, believe me. I just don't remember. If I did talk to him, I probably told him they came in with a lower price, and that was it. But I just don't remember.

* * *

1839 JAQUELIN H. HUME was thereupon called as a witness for the Respondent and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Walker:

Q. Where do you live?

A. San Francisco.

Q. Will you give us your home address?

A. 3355 Pacific Avenue.

Q. Are you appearing here in response to a subpoena, Mr. Hume?

A. I am.

Q. What is your occupation, sir?

A. Manufacturer.

Q. With what company are you associated?

A. Basic Vegetable Products, Inc.

Q. What is your position with that company?

A. Executive vice-president.

1840 Q. Where is Basic's principal office located?

A. 120 Montgomery Street, San Francisco.

Q. Do you produce and sell dehydrated onion and garlic?

A. I do.

Q. Where are your plants located?

A. We have a plant at Vacaville, California and another plant at King City, California.

Q. What products are now produced at Vacaville?

A. Dehydrated onion.

Q. Did you formerly dehydrate both onion and garlic at Vacaville?

A. Yes.

Q. When did you stop dehydrating garlic at Vacaville?

A. Two years ago.

Q. That would be in 1958, sir?

A. Yes.

Q. You have not dehydrated any garlic at Vacaville since 1958?

A. No commercial quantities.

Q. Have you done it in experimental quantities, sir?

A. Yes.

Q. Have you done any preparing or finishing of garlic at the Vacaville plant since 1958, other than these experimental quantities that you have mentioned?

A. I believe not.

Q. When you say you believe not, does that indi-
1841 cate that you have some doubt as to whether you did or did not?

A. Yes. It is possible that some garlic was finished in Vacaville, but it would not have been a significant quantity.

Q. Is it certain that none was prepared at Vacaville since 1958?

A. Yes.

Q. And it is certain that none was dehydrated at Vacaville since 1958, is that right?

A. Well, as I indicated, experimental quantities.

Q. Except for the experimental quantities?

A. Yes.

Q. Have you at any time dehydrated vegetables other than onion and garlic at the Vacaville plant?

A. Yes.

Q. During what period of time were any kind of vegetables other than onion and garlic dehydrated at the Vacaville plant?

A. The years from the end of the Second World War until, I believe, the last of 1955. I believe we gave you certain figures on that.

Q. During those same years you were also dehydrating both onion and garlic at Vacaville, is that right?

A. Yes.

Q. Mr. Hume, was any of the equipment that was used for preparing, dehydrating or finishing dehydrated onion or garlic products at the Vacaville plant ever used
1842 in preparing, dehydrating or finishing other vegetables?

A. Yes.

Q. Would that be true, if I can shorthand the question so that you understand it—if you don't, please tell me—would that be true as to the preparing equipment?

A. Yes.

Q. Would that be true as to the finishing equipment?

A. Yes.

Q. Would that also be true as to the dehydrating equipment?

A. Yes.

Q. Would that have been done in the years 1950 to 1955 at all?

A. I would appreciate your telling me what you mean by "that." I want to be sure—

Q. The use of equipment that is used for preparing, dehydrating or finishing onion or garlic, or preparing, finishing dehydrating other vegetables?

A. I think the answer is yes.

Q. What products are now produced at your King City plant, sir?

A. Garlic.

Q. That is dehydrated garlic?

A. Yes.

Q. Have you dehydrated any onion at any time at the King City plant?

1843 A. Yes.

Q. When was that done, sir?

A. Last year.

Q. Could you give us a rough approximation of the quantity of dehydrated onion that was processed at the King City plant in 1959?

A. A relatively small amount. I can't give you the tonnage.

Q. Would it be less than 100,000 pounds of the finished product?

A. I'd rather not guess on that. I would believe it would

be less than a hundred thousand, but I could be wrong.

Q. Would it be more than 25,000 pounds, sir?

A. I think it would be.

Q. Would it be more than 50,000 pounds?

A. Again, I am not sure. You are in a range where it might be.

Q. Your best guess is somewhere between 25,000 and 100,000 pounds?

A. I would think so, yes.

Q. When was the Vacaville plant built, Mr. Hume?

A. Construction was begun in 1939.

Q. When did operations commence at the plant, sir?

A. In 1939.

Q. And was that for the dehydration of both onion and garlic during 1939?

1844 A. No. I may be wrong by a year on that. We may have begun our dehydration in 1938 of garlic; the first product we dried at that plant was garlic.

Q. When did you start dehydrating the onions?

A. It would be '39, I think. These are some time ago, and I haven't refreshed my memory on this.

Q. But no later than 1940?

A. No.

Q. Mr. Hume, I would like to read you a list of the names of warehouses that were, according to information you have supplied me, in use by Basic in January 1948, and ask you if this is an accurate list:

Haslett Warehouse, Oakland, California; Overland Terminal, Los Angeles, California; Midland Warehouse, Chicago, Illinois; Leheigh Warehouse, Elizabeth, New Jersey; Zanes-Ewalt Warehouse, Dallas, Texas; Kirby Storage, Seattle, Washington; Adams Storage, Kansas City, Missouri; and Girard Warehouse in Philadelphia, Pennsylvania.

Is that an accurate list of the warehouses that were used by Basic in January 1948?

A. I wouldn't know from having checked the information—if it was supplied to you by our personnel, I am sure it is correct.

1845 Q. Well, did you at my request, Mr. Hume, prepare a list which embodied this warehouse information?

A. I didn't personally, no.

Q. Who did prepare it?

A. I assume Mr. Sparling prepared it.

Q. Are you prepared or not prepared to say that the information that was given to me is correct, to the best of your information and belief, sir.

A. If it was information that was sent to you by Mr. Sparling, I would say, to the best of my information, it would be correct.

Mr. Walker: To avoid the calling of further witnesses on this, your Honor, will counsel stipulate that his information is correct, subject to your verifying it if you wish, with Mr. Sparling? I am prepared to accept this on this basis, but I don't like to leave it the way it is with the witness, because there is no foundation here, based upon his answer.

Mr. Hays: We will be glad to check, yes, sir.

Mr. Walker: And you will stipulate that it is true and correct, except to the extent that you wish to verify it?

Mr. Hays: I don't know whether it is true or correct or not. I will accept the statement as it now stands, and if I have the opportunity to check, and Mr. Hume will

1846 grant me the opportunity to check, I will be glad to check, and if it turns out one way or another, any difference, any variance, I will be very happy to turn that information over to you for a correction of the record or for whatever purpose you want.

Mr. Walker: If such a correction becomes necessary, we may do it without calling a witness from Basic?

Mr. Hays: Yes, sir.

By Mr. Walker:

Q. Has Basic established since 1948 a warehouse in Cincinnati, Ohio?

A. I would rather not testify on this question of warehouses, because I am just not personally familiar with the details of the warehouses that we have.

As I said, I am prepared to have great confidence in any information Mr. Sparling sent you. But I haven't personally checked this particular information. I didn't see the copy of it before it left our office and came to you. I hadn't seen it until this morning.

Q. What was your position with Basic in 1950, Mr. Hume?

A. Executive vice president.

Q. Would you please describe your duties as executive vice president?

A. Well, I interested myself in all phases of the company activities. In 1950 I was concerning myself pri-
1847 marily with production, because we were being called on for an increase in production in servicing the Government, and I assume I probably went to Washington to make contact with various Government agencies. I did some servicing of large customers, and the bulk of my time would have been spent on production.

Q. When you say that you did some servicing of large customers, what do you mean by that, Mr. Hume?

A. There were several of our largest customers that I have continued to sell as the prime salesmen contact for the last 20 years, customers that I had been handling—may I change that—I originally handled all the sales, and gave up the majority of the customers I handled as I began to spend more time on production, but kept some.

Q. When did that change take place that you have just testified about, Mr. Hume?

A. About '39.

Q. How many of these large customers were there that

you continued to sell as the prime sales contact, using, I believe, your words?

A. Four or five.

Q. Where were those concerns located, that is, in what sections of the country generally, Mr. Hume?

A. In the East and West.

Q. None in the Midwest, sir?

A. Well, I continued to call on some concerns in
1848 the Midwest. This was a gradual evolution, and for a fair period of time I continued to be in touch with important customers in the Midwest, but gradually have stopped doing it.

Q. In the years 1948, 1952, did you call on any, as you have characterized them, important customers in the Midwest?

A. Oh, I am sure I did.

Q. How many such customers would there have been, sir?

A. I should think perhaps eight or ten.

Q. And during that same period of time, that is, 1948 to 1952, you continued to service these four or five large customers in the East and West, is that right?

A. Yes.

Q. Did you call on any customers in the East or West in the years '48 to '52, other than these four or five large customers?

A. Well, I indicated that in the Middle West I called on, I think—

Q. The question is in relation to the East or West, Mr. Hume.

A. Yes, there are other customers in the East and West that I called on.

Q. Approximately how many other customers in the East did you call on in the years 1948 to 1952, other than

however many of these four or five large customers are located there?

1849 A. Well, you are asking me something that is difficult to answer exactly, because I haven't reviewed this particular item. I would guess that I called on eight or ten large customers in the East and four or five in the West, perhaps more or perhaps less.

1850 Q. Now, let's take those eight or ten large customers in the East at that time, that is, in the years 1948 to 1952, Mr. Hume:

Did any of those customers buy merchandise from Basic and receive their supplies from your warehouses in the East?

A. Yes.

Q. Would the same thing be true of the customers that you called on in the Midwest during that period?

A. Yes.

• • •

1857 Q. Directing your attention again, please, to Respondent's Exhibit 160, and more particularly to 160-B, are the names listed at the top of that sheet, that is, Seaboard Warehouse, Tone Brothers, National Terminals, J. K. Laudenslager, Judge Warehouse, and Merchants Warehouse, are those warehouses or distributors or both?

A. I assume these are warehouses. I think that's what it says.

Q. Are any of those distributors, sir?

A. Well, I think that some of these firms distribute material, in addition to warehousing.

Q. Do any of those firms distribute Basic's material?

A. Yes.

Q. Which ones, sir?

A. Tone Brothers and Laudenslager.

Q. Do you know, Mr. Hume, whether Basic has established or taken on any distributors since 1948, other than

the ones that are shown on that list?

A. Yes.

Q. What are their names, please, sir?

A. I wouldn't attempt to give you the names of all
1858 of them. I can give you the name of one that crossed my mind before you mentioned that. That is the Baltimore Spice Company.

Q. When did you take on the Baltimore Spice Company as the distributor, sir?

A. Perhaps four years ago.

Q. Apparently, there was a misunderstanding between us in regard to the preparation of this list, because I had thought that you were going to list distributors, as well as warehouses.

Would you be willing to supply us with a list of the distributors that Basic has established since 1950, and the dates when those distributors were established?

A. I think so, yes.

Mr. Walker: May we have an understanding with counsel supporting the complaint that that list, when received and when verified, may be received in evidence without the necessity of calling further witnesses?

Mr. Hays: Yes.

By Mr. Walker:

Q. Are dehydrated onions and garlic produced by Basic, distributed by the H. J. Heinz Company, Mr. Hume?

A. Well, no garlic is distributed by H. J. Heinz. They do distribute onions.

Q. What kind of dehydrated onions are distributed by H. J. Heinz Company, made by Basic?

1859 A. Onion pieces.

Q. Is that the product that is known as Magic Onion, Mr. Hume?

A. Yes.

Q. Could you describe that product in a little more de-

tail than just "onion pieces"?

A Well, it is sliced onion and chopped onion.

Q Are those the ADOGA designations that are used to describe that kind of onion?

A. Yes.

Q. And that product, that is, the sliced onion and the chopped onion, is dehydrated by Basic, is that right?

A. Yes.

Q. And under whose label is the product sold?

A. Under our label.

Q. And what size package is the product sold in?

A. No. 10 cans.

Q. I'm sorry, I didn't hear you, sir.

A. No. 10 cans.

Q. And only in No. 10 cans, is that right?

A. I believe they also sell it in 2½ cans, but not in large volume.

Q. That product, that is, the Magic Onion product is distributed exclusively by the H. J. Heinz Company, is that right?

1860 A. Yes.

Q. To what types of users does Heinz sell this dehydrated onion product?

A. To restaurants and institutions.

1861 Q. Now, does Heinz distribute Magic Onion that you have described from and warehouses?

A. Yes.

Q. Do you have any idea how many of those warehouses there are in the United States?

A. I believe 80, approximately.

Q. Do you know, was Heinz distributing Magic Onion in 1950?

A. Yes.

Q. Did they sell it to the institutional trade then, as now?

A. Yes.

Q. Do you know how many warehouses Heinz distributed this product from in 1950?

A. Same number; again, these numbers, I am sure, are not exact, but they are approximate.

Q. By the way, do you sell any dehydrated onion or garlic to any divisions of Consolidated Foods Corporation?

A. I believe not.

Q. Do you know whether Magic Onion—

A. I might say, we have sold a good deal to concerns that are now owned by Consolidated Foods. They have been our best customers before they were taken over by Consolidated.

Q. Do you know whether the Magic Onion is purchased by any units of Consolidated Foods Corporation?

A. I understand that small quantities have been.

1862 Q. Isn't that a Basic product, sir?

A. Yes, but we do not sell it.

Q. It is sold under your label, isn't it?

A. That's correct.

Q. And it is manufactured by you, isn't that correct?

A. That's correct.

Q. Then you do know some of your products are sold to units of Consolidated Foods Corporation?

A. I don't believe you asked me that.

Q. For how long has Heinz been distributing your product, sir?

A. Fifteen years.

Q. In what parts of the country does Heinz distribute those products?

A. Nationally.

Q. Would that have been true since 1950?

A. Yes.

• • •

1863 (The paper referred to, heretofore marked for identification Respondent's Exhibit 161, was received in evidence.)

By Mr. Walker:

Q. Has Basic given any consideration to resuming the production and sale of dehydrated vegetables other than onion and garlic?

A. Yes.

Q. Have you given consideration to that from time to time since 1955?

1864 A. Yes.

Q. How many dehydration tunnels are installed at the King City plant?

A. Sir.

Q. Do you have any type of dehydration equipment at the King City plant other than tunnels?

A. Yes.

Q. What is that equipment, sir?

A. Bins.

Q. I'm sorry?

A. Bins.

Q. Any other type of dehydration equipment at the King City plant?

A. Yes.

Q. What kind is that, sir?

A. Ducts.

Q. Ducts?

A. Yes, curing ducts.

Q. Curing ducts?

A. Yes.

Q. Is that all, sir?

A. That is all the commercial equipment.

Q. What other kind of dehydration equipment do you have?

A. We have some experimental equipment.

Q. Would you please describe that experimental

1865 equipment? I don't mean in detail, but tell us what type of equipment it is.

The Witness: Your Honor, I don't think that this is—if I may say—unless this is particularly pertinent—we have been experimenting with some equipment that I prefer not to describe. It is an industry, a personal company-type of equipment. I prefer not to discuss it. I will if it is necessary.

Hearing Examiner Kolb: What is the materiality of this line of questioning, Mr. Walker?

Mr. Walker: If I may, Your Honor, may I hold this question until the end to see if I get all the information I need, and if I don't I will come back to it, and then ask the question again and then raise the discussion at that time; is that agreeable, sir?

Hearing Examiner Kolb: Yes.

Mr. Walker: Try to save time by doing it the other way.

Hearing Examiner Kolb: Show for the record that the question is withdrawn.

By Mr. Walker:

Q. What kind of trays are used at the King City plant?

A. Wood.

Q. Do you have electro-static separators at the King City plant?

1866 A. Yes.

Q. Do you have electronic or electric eye sorting machines at the King City plant?

A. Yes.

Q. Would you please describe the kind of binning equipment that you have installed at the King City plant?

A. I should say conventional type of bin, feed from the top and discharge from the bottom, and hot air passing through.

Q. Would you please describe the kind of separation equipment that you have installed at the King City plant?

A. We have screens and aspirators, other types of air cleaners, purifiers, and the two types of equipment that you mentioned.

Q. That is the electro-static separators and the electronic or electric eye sorting machines, is that right?

A. Yes.

Q. What kind of a system do you have for conveying the dehydrated onion or garlic in the milling and finishing area at the King City plant, whichever product is being handled there now?

A. Air.

Q. Air?

A. Yes.

Q. Could you describe the system in a little more detail, what kind of an air system is this that you use for conveying?

A. It is a standard type of air system, where the
1867 product is dumped into a moving air stream and is moved forward by the movement of the air.

Q. To your knowledge, is that type of equipment used generally by dehydrators in the United States?

A. I don't know the detail of the plants of the other hydrators of the United States.

Q. Do you know whether it is used in any other plant?

A. Yes.

Q. Which one, sir?

A. Well, it is used in flour milling plants.

1868 Q. I am talking about dehydrating plants. I am sorry if I didn't make that clear, sir.

A. I don't believe I do know that it is used in any other plant.

Q. Have you visited any other dehydrating plants in the United States in the last ten years?

A. Oh, yes.

Q. Have you visited any in the last three years?

A. Yes.

Q. Did you have occasion to see what kind of a system they had for conveying the onion or garlic or vegetables, whatever type they were dehydrating in the mill and finishing area?

A. I haven't been in—let's see, what time did you—

Q. In the last few years.

A. I haven't been in any other onion or garlic dehydration plant except our own in that period.

Q. When was the last time you were in any kind of a vegetable dehydration plant?

A. Well, I was in the Vacaville Plant within the last week.

Q. Other than your own, sir?

A. I was in American Potato Plant within the last three weeks.

Q. Go ahead, sir.

1869 Q. Are there any others?

A. Without refreshing my mind, I don't believe so.

Q. Do you consider this system that you have for conveying the dehydrated onion or garlic in the milling or finishing area in the King City Plant to be a modern system?

A. Yes.

Q. Have you installed automatic sizing, separating and screening equipment at the King City Plant?

A. Yes.

Q. Is that modern equipment, also?

A. Yes.

Q. Have you installed any Proctor and Schwartz continuous Conveyor dehydrators at either of your plants?

A. Yes.

Q. Which plants?

A. Vacaville.

Q. When was it installed, sir?

A. This year.

Q. Have you ever tested the Proctor and Schwartz dehydrator at any of your plants prior to this time?

A. Yes.

Q. At which plants, sir?

A. An old plant in Vacaville.

Q. Now, other than this Proctor and Schwartz continuous conveyor dehydrator, has Basic installed any
1870 other new equipment at its Vacaville Plant since 1951?

The Witness: Again, Your Honor, unless this thing is pertinent, I would prefer not to discuss our equipment. We do not take people through our plant. We have never asked to go through the Gentry Plant. We don't take them through our plant.

• • •

1886 By Mr. Walker:

Q. Mr. Hume, has Basic always tried to keep up to date on the installation of modern equipment for producing dehydrated onion and garlic?

A. Yes.

Q. Would that be true since 1951?

A. I would say yes.

Q. As a matter of fact, Basic has always been a leader in using modern equipment for the dehydration of onion
1887 and garlic; is that correct?

A. Would you repeat that question, please?

Hearing Examiner Kolb: Read the question back, Mr. Reporter.

(Record read.)

By Mr. Walker:

Q. You may answer the question.

A. Yes.

Q. Has Basic been interested in promoting research and development of the, or in the raw products used for dehydrated onion and garlic?

A. Yes.

Q. Has Basic expended any funds in promoting such research and development work?

A. Yes.

Q. Over what period of time has Basic spent such sums on that work?

A. Twenty years.

Q. Has Basic been interested in improving the methods of growing and harvesting raw onion and garlic to be used for dehydration?

A. Yes.

Q. Would you be willing to state what work Basic has done in this field?

A. I believe I would be glad to. We have attempted
1888 to go from the handling of onion in sacks, the onions having been hand topped, to mechanical handling of the onions, mechanical topping, and bulk transportation rather than sack transportation.

Q. Has that work been done since 1951 and prior to 1951?

A. Yes.

Q. Basic has done a good deal to increase mechanization of these processes involved in growing and harvesting of dehydrated onion and garlic; isn't that right, Mr. Hume?

A. Yes.

Q. And you have spent substantial sums for this purpose since 1951; isn't that right?

A. I should say substantial should be defined for me to make the statement. We have spent money for it. It wouldn't be substantial for Consolidated.

Mr. Walker: I will move to strike that last response as being unresponsive to the question, Your Honor, and argumentative on the part of the witness.

Hearing Examiner Kolb: The last part of the answer may be stricken.

By Mr. Walker:

Q. You would not wish to characterize, Mr. Hume, this amount of money that you have spent as being either substantial or not substantial; is that right?

A. That is correct.

Q. Would you be willing to tell us in the range or 1889 use any adjective that you wish to to describe how much money that was spent?

A. We spent a fair amount of money on the development of improved harvesting procedure.

Q. Over $100,000, sir?

A. I don't think so.

Q. Does Basic presently have any wood splinter problem in the production of its dehydrated onion and garlic, Mr. Hume?

A. Yes.

Q. I believe you testified that you still use some wooden trays; is that right?

A. Yes.

Q. Do you use some other kind of trays?

A. Yes.

Q. When did you start using those other kind of trays?

A. I wouldn't be sure of the exact date. I would say it was approximately six years ago.

Q. What kinds of trays —

A. Seven years ago —

Q. I am sorry, sir.

What kinds of trays are those?

A. Plastic.

Q. Has the domestic usage of imported dehydrated onion and garlic increased in recent years?

A. I am hesitating because there has been a change 1890 in the use in the recent year.

I believe there has been a small increase in total tonnage in recent years.

1891 Q. Has there been an increase since 1958?

A. Yes.

Q. Is that small, med' or large, that increase?

A. Medium.

Q. What types of food companies are currently using imported dehydrated onion and garlic, Mr. Hume?

A. I believe I testified when you asked me before,—

Q. Mr. Hume, would you mind confining yourself to an answer to the question, please?

What types of food companies are currently using imported dehydrated onion and garlic?

A. The largest use of which I know is bakery trade.

Q. Are other types of food manufacturers using imported dehydrated onion and garlic?

A. Some are, yes.

Q. In increasing numbers, sir?

A. Yes.

Q. I believe you testified earlier, Mr. Hume, on the other occasion when you were on the stand, or perhaps it was Mr. Sparling, but I believe it was you, that you or your brother William Hume are officers or directors of Sun Spice Vegetables, Inc., Solano Products, Inc. and American Potato Company, Inc.; is that right?

A. Now, does that question read that my brother and I are?

Q. You or your brother, sir.

1892 A. Yes.

* * *

1894 By Mr. Walker:

Q. Mr. Hume, are you or your brother, William Hume, a partner in any company that produces products in any way related to those produced by Basic Vegetable Products, Inc.?

A. A partner in, no.

Q. Laying aside the companies that you have already mentioned, are you or your brother, William Hume, a partner in any food products company?

A. No.

Q. Are you or your brother, William Hume, individually or with members of your family controlling stockholders in any food products company?

A. Yes.

Q. Other than the companies which we have already mentioned, that is, Solano, American Potato and Sun Spice Vegetables?

A. No.

Q. What position does Mr. Al Porter hold with Basic Vegetable Products, Inc.?

A. Vice president.

Q. Is he also a shareholder?

A. Yes.

1895 Q. Is he also an officer of Sun Spice Vegetables, Inc.?

A. Yes.

Q. Is Mr. Porter also an officer of the Vacaville Valley Bank?

A. Yes.

Q. What position does he hold with that bank?

A. President.

Q. In what business is Sun Spice Vegetables engaged, Mr. Hume?

A. The business of purchase and sale and contracting for items, garlic and other produce.

Q. In what business is Solano Products engaged?

A. Solano Products has been liquidated.

Q. In what business was it engaged, sir, before it was liquidated?

A. The business of the purchasing of supplies of various types and the sale of various types of supplies.

Q. Some of those supplies were sold to Vegetable Products, Inc.; is that right?

A. Yes.

Q. The same thing is true of Sun Spice Vegetables; is that right?

A. Yes.

Q. Some of them of each company are also sold on the open market; is that right?

1896 A. Yes.

Q. In what business is American Potato Company engaged, Mr. Hume?

A. Dehydration of potatoes.

Q. You have also dehydrated potatoes in the Basic Plant; haven't you?

A. Yes.

Q. Does American Potato Company currently sell any potatoes to Basic Vegetable Products, Inc.?

A. No.

Q. Mr. Hume, what is the approximate amount of Basic's total assets at the present time?

The Witness: (To the Court) Your Honor, this is something that we have not made available at all. Now, I am prepared to testify if you feel it is necessary, but we have never revealed financial information about our company which is held closely.

• • • •

1902 Hearing Examiner Kolb: . . .

Could you give us an approximate amount of your assets, Mr. Hume?

The Witness: I don't see any—I suppose that that's—I suppose that's perhaps a practical thing to do. I would prefer to consult with my brother, since we own the company largely together.

• • •

By Mr. Walker:

1903 Q. Mr. Hume, would you please state the approximate amount of Basic's assets at the present time?

A. Our capital is between two and a half and three million.

Q. I beg your pardon, sir?

A. Our capital is between two and a half and three million.

Q. Is that the same as the assets, sir?

A. I don't know exactly what you mean by assets.

Q. The left-hand side of the balance sheet, Mr. Hume, the total figure, all assets.

A. I don't recall what that is. That's something, of course, that varies during the course of the year. I don't think it's particularly pertinent.

Q. Do you know what fixed assets are, Mr. Hume?

A. Yes.

Q. Do you know what current assets are?

A. Yes.

Q. Could you give me the total of your fixed and current assets?

A. I think I have given you what seems to me is adequate.

Q. Mr. Hume, I did not ask you your capital. If you do not want to tell me the total of your fixed and current assets, all you have to do is say, no, you don't want to tell me.

* * *

1904 By Mr. Walker:

Q. Mr. Hume, has Basic's annual profits before taxes increased, decreased or remained the same since 1951?

A. Increased.

Q. What is the approximate amount of Basic's net worth at the present time?

A. I believe I gave you that; between two and a half and three million.

• • •

1908 Q. I believe you have testified, Mr. Hume, that 80 per cent of Sun Spice sales were to Basic?

A. I believe so.

Q. Mr. Hume, I may have a misrecollection here, if not I wish you would correct the record on this: I thought I heard you say that in 1939 you changed your duties from sales to production. Did you mean 1949, sir?

A. No.

Q. It was in 1939?

A. That's right.

Q. Has Basic—

A. I don't think I made the—a statement quite as flat as you recalled. I assumed the direction of production, I continued to do selling after that.

Q. Of course. I understand.

Has Basic borrowed any money from banks since 1950?

A. Yes.—

• • •

1910 Q. What is the production capacity of Vacaville plant, Mr. Hume?

A. Approximately half a million pounds of raw material a day.

Q. Would you please state that production capacity in terms of pounds of dehydrated product, if you can.

A. Approximately 70-odd thousand. About 70,000 pounds, 75,000, perhaps.

Q. Would that be true of either onion or garlic, Mr. Hume?

A. Yes.

Q. Are you now producing to capacity at the Vacaville plant?

A. Yes.

Q. What is the production and capacity of the King City plant on the same basis, sir, of dehydrated product?

A. About 25,000 pounds.

Q. Per day, sir?

A. Yes.

Q. Are you now producing to capacity at the King
1911 City plant, sir?

A. Yes.

Q. What was the cost of the King City plant, including land, building and equipment?

Not to the dollar, sir.

A. We spent over a million dollars in the King City plant.

Q. Does Basic own or lease the land on which this plant was built?

A. It's owned.

Q. How did you finance the cost of the King City plant?

A. By borrowing.

• • •

By Mr. Walker:

Q. What is the approximate number of square feet of floor space in the King City plant?

A. I don't know.

Q. Can you give us no approximation, sir?

Hearing Examiner Kolb: You have got the cost of the plant, the capacity. Why go further?

Mr. Walker: I just wish to get firmly fixed in the record the size of the plant, Your Honor.

Hearing Examiner Kolb: You have got the capacity plus the cost.

1912 Mr. Walker: I will withdraw the question.

By Mr. Walker:

Q. When was the decision made to build the King City plant, Mr. Hume?

A. 1956.

Q. Was it planned before that, sir?

A. I am not clear what you mean by that.

Q. What was the earliest date that Basic gave any consideration to building a new plant for the dehydration of onion or garlic other than the Vacaville plant?

A. 1942.

Q. Do you have a warehouse in connection with the King City plant?

A. Yes.

* * *

Q. What was the freight pricing practice followed by Basic in the years prior to 1954, Mr. Hume?

Do you understand what I mean by the phrase "freight pricing practice?"

1913 A. No, I don't.

Q. You are aware, are you not, Mr. Hume, that goods are sometimes sold f.o.b. destination, f.o.b. warehouse and f.o.b. plant?

A. Yes.

Q. What was the pricing practice followed by Basic in the years prior to 1954, that is, whether you used f.o.b. plant, f.o.b. warehouse or f.o.b. destination?

A. I wouldn't be able to answer that question without looking at the record. We have changed our practice.

1914 Q. You have no recollection whatsoever as to what the practice was prior to 1954?

A. Well, I wouldn't be able to answer your question with assurance that I was correct on the time, because we have changed our practice from time to time.

Q. During what period of time have you changed that practice, Mr. Hume?

A. I suppose the last 15 years. I don't know.

Q. You have changed your freight pricing practice, and by that I mean the use of f.o.b. warehouse, f.o.b. destination

or f.o.b. plant from time to time during the last 15 years?

A. Again I would prefer to look at the record rather than to answer that.

Q. I think, Mr. Hume, I am entitled to have your best recollection if you have a recollection.

• • •

1917 By Mr. Walker:

Q. What is your best recollection, Mr. Hume, as
1918 to whether Basic Vegetable Products, Inc., used and delivered pricing, that is f.o.b. point of destination, in the years 1945 to 1953?

A. I would prefer, as I have said, not to attempt to testify on this question without more information.

Q. It is my understanding, Mr. Hume, that if you do have a recollection in this area, you are required to state it. If I misstate myself as to the law, I am sure the Hearing Examiner will correct me, but if you do have any recollection as to the pricing practice that was followed in this area by Basic during this period of years, then you are required to state it and cannot say that you would prefer to have someone else answer.

A. I will state that I cannot remember.

Q. Can you remember, Mr. Hume, any year in which Basic Vegetable Products, Inc., used fob destination as a pricing practice?

A. I don't remember.

Q. Are you using it right now, sir?

A. I think I would say yes to that.

Q. Were you using it yesterday, Mr. Hume?

A. We are using it in one area. We are using it in the San Francisco area, and we are using it today and we were using it yesterday there.

1919 Q. Are you using destination pricing, that is f.o.b. destination in any other parts of the country at the present time other than San Francisco?

A. That I don't know.

Q. Do you know whether you are using f.o.b. warehouse pricing practices anywhere in the United States?

Do you understand what I mean by f.o.b. warehouse?

A. Yes. Yes, we are.

Q. Did you use f.o.b. warehouse pricing anywhere in the United States during 1959?

A. Yes.

Q. Did you use f.o.b. warehouse pricing practices at any time during the year 1958?

A. I think I'd say yes.

Q. And the same question for 1957, Mr. Hume?

A. I think I will have to say for that that I am beyond the point at which I will test my memory.

Q. You do not remember, Mr. Hume, whether you sold any goods, that is Basic Vegetable Products sold any goods on an f.o.b. warehouse pricing basis in the year 1957?

A. No.

Q. Have you ever sold any goods, Mr. Hume, out of your Vacaville warehouse to customers within a 100-mile radius?

A. Yes.

Q. On what basis do you sell those customers?

1920 A. Delivered.

Q. You do not sell—

A. I'm not sure about the mileage.

Q. Is there any mileage radius around the Vacaville plant, Mr. Hume, where you have sold your products f.o.b. warehouse?

A. Would you repeat that question?

Hearing Examiner Kolb: Read the question back, please.

(Question read.)

The Witness: I'm not sure I know just what you mean, Mr. Walker.

By Mr. Walker:

Q. Are there any customers, Mr. Hume, that you sell on

an f.o.b. warehouse basis?

A. Yes.

Q. Are any of those customers located close to the Vacaville plant?

A. I don't know.

Q. Are you saying to me, Mr. Hume, that you cannot name a single customer that you recall or know was sold on an f.o.b. warehouse basis anywhere in the United States in the years 1950 to 1957, inclusive?

A. I don't believe you asked me that question.

Q. I am asking it now, then, sir.

A. Would you state the question then, please?

Hearing Examiner Kolb: Read the question.

1921 (Question read.)

The Witness: I think I stated before I do not remember. That is correct.

By Mr. Walker:

Q. You do not remember any?

A. That's right.

Q. You do not know whether in any single sale Basic Vegetable Products, Inc. made that sale on an f.o.b. warehouse basis in any of the years 1950 to 1957; is that right, Mr. Hume?

A. That is correct.

Q. And you do not know whether Basic Vegetable Products, Inc. used f.o.b. warehouse pricing anywhere in the United States during the years 1950 to 1957; is that right?

* * *

1923 By Mr. Walker:

Q. You have testified, Mr. Hume, that you were presently selling to customers in the San Francisco area on a delivered pricing basis; is that right?

A. Yes.

Q. That answer implies that you were not always selling

in the San Francisco area on a delivered pricing basis; is that right?

A. Yes.

1924 Q. On what basis were you selling in San Francisco before you sold on a delivered pricing basis?

A. F.o.b. plant.

Q. When did you sell on an f.o.b. plant basis in the San Francisco area?

A. I believe up to about two years ago.

Q. Is there a distinction in your mind between f.o.b. plant and f.o.b. warehouse, Mr. Hume?

A. Yes.

Q. Do you have a warehouse at the plant?

A. Yes.

Q. When you ship those goods out to these customers in the San Francisco area you deliver them from the warehouse; don't you? That is the warehouse at Vacaville?

A. Not necessarily.

Q. But some of them you do; is that right?

A. Yes.

Q. Now, then, let's go back to f.o.b. plant, then, Mr. Hume, since you were using the distinction between f.o.b. plant and f.o.b. warehouse at the plant to avoid answering the questions—

A. I don't believe I have been using anything to avoid answering a question, Mr. Walker.

Q. During what period of time, Mr. Hume, did Basic Vegetable Products, Inc. sell its products f.o.b. plant in the San Francisco area?

1925 A. I believe I testified that approximately two years ago we were selling f.o.b. plant in the San Francisco Bay area.

Q. That is right, Mr. Hume, and the present question is: During what period of time that practice went on, that is, that you were selling f.o.b., as I have just stated—

A. I can't remember.

Q. To the best of your recollection, Mr. Hume, did Basic Vegetable Products, Inc. make any change in its delivered or freight pricing practices in the year 1955?

A. To the best of my — would you repeat that, please. To the best of my what?

(Question read.)

The Witness: I don't recollect.

By Mr. Walker:

Q. Then, Mr. Hume, is it true that Basic Vegetable Products, Inc., was—

Mr. Walker: I am sorry. Strike that.

By Mr. Walker:

Q. That Basic Vegetable Products, Inc. changed its pricing practices, its f.o.b. pricing practices in 1955 as a result of the competition afforded by the Gentry Division of Consolidated Foods Corporation?

A. I don't remember.

Q. If you were asked the same question about the year 1954 would your answer be the same?

1926 A. The same.

* * *

Cross Examination

By Mr. Hays:

Q. Mr. Hume, you stated on direct examination that there had been an increase in the number of users of imported onion. Is that correct?

A. Yes.

Q. Will you tell us the type of this increase, that is, from the point of view of the number of users that have increased from 1956 to the present?

A. May I make sure I understand your question, Mr. Hays. Is it you want to know the additional people who are now—who have become users in this period?

Q. Yes, sir.

A. I don't know it by number. I do see pounds of imports, and if my memory holds there's been an increase of perhaps three to four hundred thousand pounds in that period of imports, of dehydrated onion.

Q. Has there been an increase in the use of dehydrated garlic in 1956, sir?

1927 A. Of imports?

Q. Yes, sir.

A. Yes.

Q. What is that increase in pounds, please?

A. I believe in the same general range, around three hundred to five hundred thousand pounds. But, it started from a much lower base.

Q. From what countries were these products imported?

A. The imports of onion have come from Egypt, Holland, Bulgaria, Mexico, Turkey, France. The imports of garlic have come from Mexico, Italy, Egypt, France, Japan. Those are the ones to my memory.

• • • •

1929 Los Angeles, California
October 21, 1960

1930 PROCEEDINGS

• • •

1931 JOSEPH B. PARDIECK was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

1932 *Direct Examination*

By Mr. Walker:

Q. Would you state your full name, please?

A. Joseph B. Pardieck.

Q. Where do you live, Mr. Pardieck?

A. 1525 Waverly Road, San Marino, California.

Q. What is your occupation, sir?

A. Consultant to California Vegetable Concentrates, Inc.

Q. What are you duties with California Vegetable Concentrates, Inc., at the present time?

A. At the present time I am acting general sales manager.

Q. Is that temporary, Mr. Pardieck?

A. Yes.

Q. Where is that company located, Mr. Pardieck?

A. 2069 Clarendon Avenue, Huntington Park, California.

Q. In what business is that company engaged?

A. In dehydrating and selling of vegetables.

Q. Would you please name, Mr. Pardieck, the vegetables that are dehydrated and sold by California Vegetable Concentrates?

A. Practically all of the vegetables that are grown in California with the exception of onion, garlic and chili peppers; predominantly carrots, celery, parsley, bell peppers and pimiento.

Q. Is California Vegetable Concentrates, Inc. associated with any other company?

1933 A. We are a wholly owned subsidiary of General Foods Corporation.

Q. When did General Foods buy all the stock of California Vegetable Concentrates?

A. In May of this year.

Q. Prior to the time that General Foods acquired all of the stock of California Vegetable Concentrates, what was your position with that company?

A. I was president.

Q. How long were you president of California Vegetable Concentrates?

A. Since 1943.

Q. For how long has California Vegetable Concentrates produced and sold dehydrated vegetable products?

A. Since 1929.

Q. Where are the plants of that company located, Mr. Pardieck?

A. Plant No. 1 is at Huntington Park, California. Plant No. 2 at Modesto, California. Plant No. 3 is at Oxnard, California and the new plant No. 4 at Modesto, California.

Q. When was the new plant at Modesto built that you have referred to as "Plant No. 4," Mr. Pardieck?

A. 1957.

Q. Has California Vegetable Concentrates produced any dehydrated onion or garlic at the plants you have men-
1934 tioned Mr. Pardieck?

A. In 1930 we produced garlic at Huntington Park. Then, through the years we have occasionally made onion dehydration tests.

Q. What kind of dehydrating equipment do you have at the Huntington Park plant, sir?

A. We have tunnels.

Q. How many of those tunnels are there at the Huntington Park plant?

A. Four.

Q. We have heard a great deal of testimony in this case about tunnels. Will you please describe what a tunnel is?

A. A tunnel is, as the name implies, is approximately 40 to 50 feet in length, six feet in height and about three foot four inches in width. The heat is either through direct wire or through retort using oil. The air is blown through the tunnels by fans.

Q. It is that heated air going through the tunnels that dehydrates the produts; is that right?

A. That is correct.

Q. How is the product that is to be dehydrated carried through the tunnels?

A. The product is spread on wood trays. There are usually 25 of these wood trays to a car. The cars are either pushed through manually or through automatically through

1935 the tunnels. The air goes through countercurrent to the movement of the cars and trays.

Q. I believe you stated, Mr. Pardieck, that the heated air in tunnel dehydration moves from one end of the tunnel to the other, that is parallel to the floor; is that right?

A. Parallel to the floor, yes, sir.

Q. What kind of dehydrating equipment do you have at the old Modesto plant?

A. Tunnels.

Q. How many of those tunnels do you have there?

A. Six.

Q. What kind of dehydrating equipment do you have at the Oxnard plant?

A. Proctor and Schwartz belt continuous dehydrator.

Q. Will you please describe the Proctor and Schwartz belt dehydrator, Mr. Pardieck?

A. It is a metal belt, eight foot wide, moving at the rate of 15 to 20 foot per minute. The vegetables are spread automatically on this belt. As the belt moves through, the air comes from either below through the product or from above down through the product. There are two stages. The product is dumped or automatically falls from one belt to the second belt and again the air is up and down through the product.

Q. What kind of dehydrating equipment do you
1936 have at the new Modesto plant, Mr. Pardieck?

A. Tunnels and trough dryers.

Q. How many tunnels do you have at that plant?

A. Four.

Q. Would you please describe a trough dryer?

A. A trough dryer is a belt formed, as the name implies, in a trough. The vegetables are put automatically fed to one end of this belt trough. The trough moves slowly and the vegetables move with the belt. As the trough

reaches the end of the trough, the vegetables attempt to climb and fall back onto the bed. The air passes from the bottom through the vegetables and in a sense the vegetables are held in suspension by the air moving through the vegetables from below.

Q. At which of your plants, Mr. Pardieck, could you now produce dehydrated onion or garlic?

A. We could produce garlic at the Oxnard plant and onion and garlic at the new plant No. 4 at Modesto.

Q. Mr. Pardieck, why has California Vegetable Concentrates not produced dehydrated onion and garlic on a regular basis?

A. We have always produced these other vegetables at a profit and we have figured that inasmuch as onion would have to be produced at the same time as the other vegetables, and inasmuch as we had a market for these other vegetables and were selling our production, we decided to continue with the vegetables other than onion and

1937 garlic.

Further, we wanted to be known as a company specializing in dehydrated vegetables other than onion, garlic and chili peppers.

Q. Have you actually ever considered at California Vegetable Concentrates going into onion and garlic dehydration on a regular basis?

A. Yes, we have.

Q. Mr. Perdieck, what effect has the fact that Gentry is owned and operation by California Concentrated Food Products [sic] had on your decision not to sell dehydrated onion and garlic on a regular basis?

A. None.

Q. Do most customers who now buy your dehydrated vegetables also use dehydrated onion and garlic?

A. Yes.

Q. Mr. Pardieck, what was your first experience with fruit or vegetable dehydration?

A. In 1920 I took a position with the Burbank Canning Company to dehydrate grapes.

Q. How long were you with this company, sir?

A. Until 1923.

Q. What did you do thereafter?

A. In 1923 we organized the California Vegetable Products Company.

1938 Q. What duties did you perform with that company, sir?

A. I was in charge of production.

Q. Where was that company located?

A. In Burbank, California.

Q. In what business was that company engaged, sir, at that time?

A. In dehydrating of onion, garlic and other vegetables.

Q. Mr. Pardieck, was there any other company engaged in dehydrating onion and garlic products at that time?

A. No.

Q. Had any other company produced dehydrated onion and garlic before that time?

A. Whittenburg-King in dehydrating onion and garlic during World War I and up to 1920.

Q. How long did you work with California Vegetable Products Company, sir?

A. Until 1929 when it was sold to its selling company.

Q. What was the name of that selling company, sir?

A. Vegetized Foods, Incorporation.

Q. What did you do at that time, sir?

A. I stayed with Vegetized as vice president in charge of production.

Q. Were you associated with any other company at that time?

A. In 1929 we organized California Vegetable Concentrates, Inc.

1939 Q. How long, Mr. Pardieck, did you stay with Vegetized Foods?

A. Until 1931.

Q. In what business was California Vegetable Concentrates engaged in that time, sir?

A. In the manufacture and sale of dehydrated vegetables for special dietary purposes.

Q. What happened to your part ownership of California Vegetable Concentrates at that time?

A. I retained the ownership.

Q. Then what did you do in 1931, Mr. Pardieck?

A. William Hume and I organized Basic Vegetable Products Company in Texas.

Q. In what business was that company engaged, sir?

A. Dehydrating onion.

Q. Whereabouts in Texas was that?

A. Corpus Christi, Texas.

Q. How long did that business last?

A. In Texas about one year.

Q. What happened thereafter, sir?

A. We moved the company to Vacaville, California.

Q. Is Basic Vegetable Products Company and Vacaville Company; is that now known as Basic Vegetables, Inc.?

A. It is, but there has been a change in ownership.

Q. Did you have any interest in Basic Vegetable
1940 Products when it was started in Vacaville in 1932?

A. I was a partner.

Q. Who was the other partner, sir?

A. William Hume.

Q. What type of work did you do with Basic Products in 1932 and thereafter, sir?

A. I was with Basic Vegetable Products Company from 1932 to 1937. I was always in charge of production, but I

made occasional sales trips.

Q. That is you were in charge of production of dehydrated onion and garlic?

A. Yes, sir.

Q. You testified that you left Basic Vegetable Products Company, Inc. in 1937. What did you do at that time, Mr. Pardieck?

A. I joined California Vegetable Concentrates, Inc., and in which I still had a part ownership.

Q. Since 1937, Mr. Pardieck, have you maintained any interest in the dehydration of onion and garlic?

A. Yes.

As I previously mentioned, we have occasionally dehydrated onion. I have also visited many plants to keep informed on onion dehydration technique. Actually, in dehydrating vegetables, the dehydration onion is quite similar and I wanted to keep abreast of all the new technical developments.

1941 Q. When you say the dehydration of onion is quite similar, you mean the dehydration of onion is quite similar to the dehydration of other types of vegetables?

A. Other types, yes, sir.

Q. Have you held any positions, Mr. Pardieck, in organizations concerned with dehydration?

A. From 1941 to 1947 I was chairman of the California Dehydrators' Association.

Q. What was the membership of that group, sir?

A. All of the dehydrators in Southern California.

Q. What work was performed by the Association, Mr. Pardieck?

A. At that time the Army—the Government was interested in dehydrated foods for the war effort. The Association acted as a liaison between the Government and the manufacturers. Our objective was to improve the quality

of vegetables dehydrated and to work closely with the Government.

Q. Did California Vegetable Concentrates work with the Government in any other way during this period, Mr. Pardieck?

A. In about 1941 at the very start of the war a number of technicians from the Western Regional Research Laboratory of Albany, California, came to our Huntington Park plant and we instructed them in the art of dehydration. These technicians subsequently went and instructed other persons who wanted to enter the dehydration—the vegetable dehydration industry during the war.

1942 Q. Did you do any work yourself in connection with the establishment of these new plants, Mr. Pardieck?

A. I would talk individually to the operators, and I would subsequently visit the plants and give them all of the technical assistance that I could in the proper manufacture of vegetables dehydrated.

Q. Are there any dehydrators' organizations with which you have been associated, other than the California Dehydrators' Association?

A. The National Dehydrators' Association, yes.

Q. Did you hold any position with that organization?

A. In 1944, I was Chairman of the Board.

Q. What was the membership of that association?

A. About 350, around in that figure.

Q. What were those 350 members, sir?

A. They represented firms, people who were interested in vegetable dehydration in the war effort. There was a big demand for vegetables dehydrated during the war for feeding of troops, Navy.

Q. When did this organization exist, that is, during what period of years?

A. During the period—about 1941 to 1947.

Q. Are you a member of any other organizations in this

field, Mr. Pardieck?

A. I am a professional member of the Institute of
1943 Food Technologists and represent the company at
Quartermasters' Food and Container Institute.

Q. Are you also a member of the Executive Committee of the California Section of the Institute of Food Technologists?

A. I have served three different years as member of the Executive Committee, yes.

Q. Will you please describe those two organizations that you have just mentioned, Mr. Pardieck, and their membership?

A. The Institute of Food Technologists is an international organization of food scientists banded together to improve food techniques.

The Quartermasters' Food Container Institute is a group of companies cooperating with quartermasters on food products.

Q. Now, Mr. Pardieck, have you had occasion to visit the dehydration plants of other companies engaged in the business of dehydration food?

A. I have visited practically every plant in the United States and abroad because I wanted to keep abreast of newest techniques and — well, newest techniques in dehydration.

Q. Now, Mr. Pardieck, based upon that experience, will you please name those dehydration plants in this country which with minor modifications could be used for dehydrating onion and garlic that are not now doing so?

A. Well, we will start with our own company, California
Vegetable Concentrates. Then there is the Santa
1944 Maria Chili Company at Santa Maria; there is Cal-
Compack Foods, Inc. at Santa Ana; Chili Products Company here in Los Angeles, and then there is the E. C. Fogel Plant in Douglas, Arizona. Then there are many

others, of course, that could be adapted. But, those are the principal ones.

Q. What about the Simplot plant in Idaho?

A. Simplot Plant, because they have previously dehydrated onion and garlic.

Q. What business is Santa Maria Chili Products engaged in?

A. Manufacture and dehydration of chili products, but they do occasionally process or dehydrate onion and garlic which they blend with their chili products, and I understand they are currently dehydrating onion and garlic for that purpose.

Q. In what business is the E. C. Fogel Company engaged, sir?

A. Also in the dehydration of chili products, capsicum products.

Q. To your knowledge, has the E. C. Fogel Company dehydrated any onion or garlic?

A. Last year the Fogel Plant was leased to the Canyon State Canners, and during this lease the Canyon State Canners did dehydrate onion.

Q. In what business is Chili Products Corporation engaged, Mr. Pardieck?

A. Chili Products is engaged in dehydrating chili
1945 peppers, chili products.

Q. You have told us of plants that could dehydrate onion and garlic with only minor modifications, and mentioned those which have actually dehydrated onion and garlic. Are there other companies that have some equipment and facilities that could be used for dehydrating onion and garlic?

A. Yes, there are many tunnel dehydrators. But, they would have to have installed preparing equipment and finishing equipment suitable to the processing of onion and garlic in addition to the tunnels.

Q. Well, will you please name, Mr. Pardieck the kinds of equipment that these dehydrators now have that would be usable if they dehydrated onion and garlic?

* * *

1946 The Witness: They would have the tunnels and the trays. They would have water, electricity and heat.

By Mr. Walker:

Q. To what extent, Mr. Pardieck, is tunnel-dehydrating equipment used today in vegetable dehydration?

A. It is used uniformly.

Q. Is it used by most companies that are engaged in vegetable dehydration?

A. Yes.

Q. Do most companies now dehydrating vegetables use Proctor and Schwartz continuous dehydration equipment?

A. No.

Q. Mr. Pardieck, what is the extent of supply of raw material used for dehydrating onion and garlic?

A. The onions are—if you wanted to go into the dehydration of onion, you should consider the West Coast,
1947 because suitable onions are grown in California, Idaho and Arizona; whereas, garlic is grown almost exclusively in California.

Q. To what extent is there in the West, Mr. Pardieck, a supply of the raw material that is needed for dehydrating onion and garlic?

A. Onion and garlic for dehydration purposes is usually contracted for in advance of the season, and there are many growers who have previously grown onion and garlic under contract that would be open for additional contracts.

Also, onion and garlic can be procured on the open market. Sometimes this quality isn't too good, but for years Lou Chinelik of Turlock has purchased onion and garlic from the open market.

Q. And that onion and garlic purchased on the open market is for use in onion and garlic dehydration?

A. That is correct.

Q. Mr. Pardieck, what was the impact of World War II on the volume of dehydration including onion and garlic?

A. There was a tremendous increase owing to quartermaster purchase.

Q. Then, what happened in relation to the volume of vegetable dehydration including onion and garlic after World War II?

A. Unfortunately, some of the quality of vegetables dehydrated during the War was not of the highest, and the consumer acceptance — there was a disillusionment 1948 with the housewife as to the quality.

Now, about 1950, as a result of improved techniques as a result of these food technologists selling management, as a result of new products, convenient foods, and as a result of the start of the Korean War, the acceptance of vegetables dehydrated was again on the increase.

Q. Has that increase continued since that time, sir?

A. Very remarkably so.

Q. Would that description that you have given include dehydrated onion and garlic also?

A. Yes, sir.

Q. Now, Mr. Pardieck, will you please describe the various operations that are performed in the dehydration of onion?

A. Of onion?

The onion normally is brought to the plant in bins. At the plant the onion is dumped out of the bins. The loose skin and dirt is aspirated away. The onions are put over a roller conveyor to be inspected and washed. They are then rooted and the tops removed. They are then sliced, spread on trays, and put through the tunnels for primary dehydration. After they have had the primary dehydration,

the onions are removed from the trays, put into bins for completion of the drying. From the bins they are dumped on inspection belts. After inspection, they are put through flaking for pieces or through a mill for powder. They are packed, weighed and put in shipping cases ready for shipment.

Q. Now, would the operation be the same for dehydrating garlic, Mr. Pardieck?

A. With the exception that instead of rooting and removing the tops, you would use a garlic cracker to remove the cloves from the bulk, and then you would use sort of a water aspirating system to remove the skin and the root from the cloves.

Q. Now, Mr. Pardieck, would you please name the types of equipment that are needed in a dehydration plant to perform the various operations that you have described?

A. The onions come in these tote bins. They are then dropped into a bin. They are automatically taken out of this bin with a roller conveyor. At the end of the roller conveyor is usually the aspirator which picks up the loose skins. From there they go over to the inspection table. They are washed, and the roots are removed, either by hand or automatically, as well as the tops.

Q. Excuse me, Mr. Pardieck. At this time I want you to name the kinds of equipment that are used as you go through this operation.

A. Shall I start over?

Q. Yes, please.

A. The onions are brought into the plant in bins. The bins are dumped into a pit. The onions are taken out of this pit with the roller conveyor. At the end of the roller conveyor. At the end of the roller conveyor is an aspirating machine which removes the loose skins. As the onions fall out of the aspirating machine, they go on to an inspection belt which is a rubber or roller. They

are then inspected for blemish rots. They are then either — the roots and tops are either removed by hand or by mechanical means, such as the hydrot.

After the roots have been removed, they are conveyed by belt or mechanical elevator to a slicing machine. From the slicing machine they drop onto the trays. The trays are fed to a tray line either by an automatic tray loader or by hand.

The trays are stacked either by hand or by automatic tray stacker. There are 25 trays usually to a car. The car is propelled on a track through the tunnel. After the completion of the primary stage of drying, which the product is usually around ten per cent moisture, they are detrayed either automatically by detraying machine or by hand.

The onions fall into a bin. The air is applied through the bottom of the bin by pressure. The final drying occurs. The bin is then elevated by a hoist. The dry onion slices are automatically fed to a second inspection belt for removal of any blemishes or off colors. If the product is to be made in pieces, from the inspection belt it goes to a flaking machine and over to a screen slicing machine to reduce it to definite sizes. If the product is to be made into pow-
1951 der, it is fed into a hammer mill and also over a screen for classification.

From either the flaking machine or the hammer mill, the product is packed in suitable type containers, weighed and packed.

Q. Now, Mr. Pardieck, how many tunnels would be needed to dehydrate in a year about one million pounds of onion, and five hundred thousand pounds of garlic?

A. Four tunnels.

1952 Q Mr. Pardieck, how much would it cost today to purchase all of the equipment of the type you have described that would be needed to dehydrate one million pounds of onion and 500,000 pounds of garlic per year?

A. Approximately $250,000.

Q. That would include all of the equipment you have described plus whatever incidental plant and office equipment is needed; is that right?

A. It would.

Q. Mr. Pardieck, how much would it cost to acquire the land and construct a building that would adequately house this equipment?

A. Under $100,000.

Q. For how long would such a plant have to operate before reasonable sales returns came in, assuming that the production could be sold?

A. From six to nine months.

Q. About how much working capital would be required to finance all working operations during this period?

A. About $400,000.

Q. How do you arrive at that figure, Mr. Pardieck?

A. To produce a million pounds of onion and 500,000 pounds of garlic, you would need approximately $600,000. The banks are willing to loan 50 percent of that inventory, or they would loan against the total inventory of $600,000 —

1953 Q. Excuse me, Mr. Pardieck. I don't think you made it clear what would cost $600,000.

A. To produce and put in the inventory a million pounds of onion and 500,000 pounds of garlic it would cost approximately $600,000.

Q. That is the cost of the raw material?

A. That is the cost of the raw material, the whole product, the finished product.

Q. Right.

Go ahead.

A. The raw material, the cost of manufacture, the containers, all of the cost in the finished product.

Q. I am sorry I interrupted you, Mr. Pardieck. Would you go ahead and complete your explanation at how you

arrived at the $400,000 figure?

A. If you had a $600,000 inventory at cost, the banks would you loan 50 per cent [or] $300,000. You would then use $300,000 of the $400,000 in carrying—$300,000—yes, of the $400,000 in carrying of the inventory together with the bank loan. Then the remaining $100,000 would be your operating capital to take care of your overhead and office help and the running of the business.

Q. Now, Mr. Pardieck, are the estimates that you have given for cost of equipment, land, building and operating expenses on the high side or low side?

1954 A. They are on the high side.

If you wish, I would like to present — I have written up these pieces of equipment and have drawn a simple flow sheet. I am not an engineer, but I have drawn a simple flow sheet and have itemized these.

If the Court wishes, I will present this.

Q. I think we have enough in the record on it, Mr. Pardieck, unless Mr. Hays wishes to cross examine about it when his turn comes.

What are the plant locations' problems in dehydrating onion and garlic?

A. Well, you have an odor problem. You have a labor problem and a utility problem.

Q. You have already mentioned that you should locate the plant in the western site where the best raw material is available; is that correct?

A. That is correct.

Q. Now, to what extent are there areas in California where a plant can be located without being stopped by the odor problem?

A. There a number of incorporated areas where a plant could be located, where labor, utilities are all available.

Q. Mr. Pardieck, to what extent are there individuals available who have adequate technical know-how for dehy-

drating onion and garlic?

1955 A. They are available.

Q. How large a sales force would be needed to sell the dehydrated onion and garlic in the amount that you testified about a few moments ago?

A. I would say two salesmen assisted by some brokers.

Q. Now, Mr. Pardieck, would you please repeat at this time the products that are sold by California Vegetable Concentrates, Inc.?

A. Practically all vegetables grown in Southern California with the exception of onion, garlic and chili.

Q. Do you use dehydrated onion and garlic in any of your products?

A. Yes, sir.

Q. Would you please describe those products?

A. We use them in vegetable blends.

Q. How does California Veg 'able Concentrates market its product?

A. To direct sales by personal salesmen.

Q. During what period of time has California Vegetable Concentrates sold any of its products to any units of California Consolidated Foods Corporation?

A. Since about 1945.

Q. What products were sold to Consolidated by California Vegetable Concentrates during this period?

A. Peppers, horseradish, parsley.

1956 Q. To what units of Consolidated have these products been sold?

A. Columbia Foods, Orchard Hill Farms, Ocoma, U. S. Products Company and to some processing plants in the Midwest.

Q. Mr. Pardieck, what was the approximate dollar vol-

ume of California Vegetable Concentrates' sales to Consolidated in 1958?

A. About $30,000.

Q. About what percentage of your total sales would that be?

A. That would be less than one per cent.

Q. What has been the trend of your sales to Consolidated during recent years?

A. It stayed about that same figure.

Q. Mr. Pardieck, since 1950 who has made the decision as to the sources of supply of dehydrated onion and garlic for California dehydration concentrates?

A. I have.

Q. What sources of supply have you used during that period?

A. The period being?

Q. Since 1950.

A. 1950. From '50 to today?

Q. The question is: From what companies have you purchased dehydrated onion and garlic in the period since 1950?

A. From Gentry and Basic.

(The document referred to was marked Respondent's 1957 Exhibit 162 for identification.)

Mr. Walker: This is Respondent's Exhibit 162 for identification which is a tabulation of the purchases in pounds of dehydrated onion and garlic by California Vegetable Concentrates, Inc. from Gentry and Basic in the years 1946 to 1958.

The source of the Gentry data is the Service Bureau Corporation tabulation and the source of the Basic data is the records of California Vegetable Concentrates, Inc.

As were the other exhibits, the absence of figures, that is

wherever there is a blank, indicates that there were no purchases from that company of that product in that year.

By Mr. Walker:

Q. Mr. Pardieck, directing your attention to Respondent's Exhibit 162 for identification, where was the data shown on this exhibit for your purchases from Basic obtained?

A. From our own records.

Q. Will you please describe those records?

A. Purchase orders.

Q. Was that data obtained at your request and purchased at your instructions?

A. Yes, sir.

Q. Would you be willing, Mr. Pardieck, to make the record from which this data was attained available to the Government for inspection?

1958 A. Yes, sir.

Q. Mr. Pardieck, why is there no data shown for purchases from Basic in the years 1946, 1947, 1948 and 1956?

A. Our records did not go back to 1946, 1947 and 1948. In 1956 we had a fire and our purchasing records for that year were destroyed.

Mr. Walker: At this time, Your Honor, I would like to offer Respondent's Exhibit 162 into evidence.

Mr. Hays: May we have the same reservation with reference to Respondent's Exhibit for identification 162 as we had with the other exhibits of this similar nature?

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit 162 subject to reservations taken on other exhibits. The document will be received.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 162, was received in evidence.)

1959 By Mr. Walker:

Q. Mr. Pardieck, this exhibit, Respondent's Exhibit 162, shows up until 1955—that is prior to 1955—you purchased most of your dehydrated onion and garlic from Gentry. Why was that, Mr. Pardieck?

A. I know and had known the first president of Gentry, George Clausen, since 1921. We were very good friends. When he built the Gilroy plant, I was instrumental in their putting in two extra tunnels so as to assure California Vegetable Concentrates of an adequate supply of dehydrated onion and garlic. I liked their product. I liked the service and up until 1955 Basic Vegetable was a competitor.

Q. In what products was Basic a competitor of yourself up until 1955?

A. They had produced celery, parsley and carrots.

Q. A line of dehydrated vegetables that you also produced?

A. That we also produced, yes, sir.

Q. Was it 1955 that Basic stopped selling dehydrated vegetables other than onion and garlic?

A. Yes, sir.

Q. Now, since Basic stopped producing dehydrated vegetables altogether, where have you purchased most of your dehydrated onion and garlic?

A. From Basic Vegetable.

Q. Why is that, Mr. Pardieck?

1960 A. About 1955 to 1956 a new product was introduced called stewed tomatoes. Basic salesmen called at every tomato processing plant in an attempt to sell the dehydrated vegetables in the plant into the manufacture of stewed tomatoes, onion, bell peppers and celery.

Basic wanted to buy our celery and peppers. I preferred to sell direct. So, when Basic furnished us the names of all of the companies interested in stewed tomatoes, we purchased the onions which went into the blends we made for

the stewed tomato customers. That accounts for the increase in purchase of onion in those years from Basic.

Q. Now, Mr. Pardieck, we have informed the Hearing Examiner, of course, that we have talked to the witnesses about this case.

Before you were contacted in connection with your appearance as a witness, had you ever talked with anyone about a relationship of any kind between your sales to Consolidated Foods Corporation and your purchases of dehydrated onion and dehydrated garlic?

A. No, sir.

Q. Have you had any communication of any kind on that subject?

A. No, sir.

Q. Mr. Pardieck, what effect has the fact that Consolidated is a customer of California Vegetable Concen-
1961 trates had on volume of your purchases of dehydrated onion and dehydrated garlic from Gentry since 1950?

A. None.

• • •

Cross Examination

By Mr. Hays:

Q. I refer to your testimony with reference to the Canyon State concern that dehydrated some onion. Do you recall that testimony?

A. Yes, sir.

Q. Now, what is the name of that company?

A. Canyon State Canners. I do not know whether it is company or incorporated.

Q. And where is it located?

A. In Douglas, Arizona.

Q. Have you seen their plant?

A. I have.

Q. Will you describe their plant?

A. They are a canner of chili products. They
1962 leased the Fogel plant to dehydrate onion.

Q. They dehydrated onion, to your knowledge, in what year?

A. Last year, '59. I was there.

Q. In 1959?

A. That's right.

Q. When did they commence that dehydration of onion?

A. In 1959.

Q. Did they stop dehydrating onion?

A. They made an experiment of, I don't know how many tons, but I was there one day when they were actually dehydrating onion.

Q. You don't know whether they are still dehydrating onion or not; do you?

A. They are not, to my knowledge.

Q. They stopped?

A. Yes.

Q. Do you know why they stopped?

A. No.

Q. Do you know when they stopped?

A. I don't know the exact date. They stopped last fall.

Q. That is fall of 1959?

A. '59, yes.

Q. They started in '59?

A. That's right.

Q. Do you know whether they dehydrated for their
1963 own canning operation or for some other purpose?

A. I do not know.

Q. You don't know what they did with the material they dehydrated?

A. I do not know what outlets they sold to, no.

Q. Do you know whether they sold it or not?

A. I am sure they have sold it, yes.

Q. They sold it?

A. Yes.

Q. Do you know how much they sold?

A. No.

Q. Do you know where they sold it?

A. No.

Q. How do you know they sold it?

A. Rumor in the trade is all.

Q. What was their other business, this Canyon State outfit?

A. They can chili specialties.

Q. Could they have used this dehydrated onion and garlic in their chili specialties?

A. In another year they could. They had finished their chili run when I was there and they embarked in this experimental run of onion.

Q. They don't dehydrate onion and garlic any more, is that right?

A. That I don't know.

1964 Q. You haven't heard any rumors about it; have you?

A. No, I have not.

Q. In your direct testimony you referred to an unidentified number of people that had tunnels or something that could dehydrate things; do you recall that testimony?

A. I do.

Q. Now, just who were these people that had facilities that could be used for dehydrating onion but they don't do it?

A. There are a lot of farmers who have tunnels for the dehydration of prunes and apricots who have the tunnels. With the addition of preparing and finishing equipment, those same tunnels could be used for onion and garlic dehydration.

Q. Could they be used for just the dehydration alone or could they be used completely for the complete preparation

of dehydrated onion and garlic?

A. As I stated, you would have to add preparing equipment and finishing equipment. The tunnels alone couldn't be used. The fruit equipment they have would not be suitable for onion dehydration.

Q. How could they dehydrate onion and garlic with that odor and still dehydrate prunes? Do they do that?

A. The answer is I have.

Q. I didn't hear you.

1965 A. The answer is I have done that. The prune dryer usually has a lye pit, a boiling lye pit. The trays with the prune juice dried on it is put in this lye boiling pit. The prune juice is cooked off.

After garlic, the same procedure occurs.

Q. Did you dehydrate both at the same factory?

A. The former dehydrated the prunes, I dehydrated onion and garlic.

Q. At the same time?

A. No, not at the same time; between seasons. When they run prunes, they run prunes until the season is over. After the prune season is over, then we put in our preparation and finishing equipment and process both before and after the prune season, yes.

Q. All right.

Now, it could be done in separate seasons; is that right?

A. Yes.

Q. How long have you been in California?

A. Since 1920.

Q. Now, just how many of these farmers do you know that have these tunnels that have done this—that is, dehydrated prunes in one season and dehydrated onion and garlic in another season—in the same tunnel?

A. It has been done on one, two, three.

Q. Three you know of?

1966 A. Yes, sir.

Q. Will you name those circumstances?

A. One was back when I started Basic. That was a prune dryer dehydration. The other was done by Gentry in Pacheco Pass. I can't recall the name of the grower.

Q. Was done by Gentry?

A. Yes.

Q. What was the third one?

A. It was—I did it experimentally at a plant north of Gilroy. I can't remember the name of the grower.

Q. Now, when did you undertake this Vacaville operation and when did you cease it?

A. The Vacaville operation was in 1931.

Q. When did you cease it?

A. Well, I left there in '37.

Q. In other words, from 1931 to 1937 you dehydrated prunes in one season—

A. The grower-owner of the plant dehydrated prunes and we dehydrated onion and garlic.

Now, I know it was done in '32, '33, '34 and '35. I do not know whether it was in '36 or '37. I can't recall the exact dates, whether we moved then or not. But, those earlier years I can definitely state yes.

Q. Do they do it today?

A. No.

1967 Q. Do you know when they stopped?

A. When they built their plant. When Basic built their plant.

Q. Now, how long did this operation that occurred north of Gilroy, how long did that go on?

A. I prefer that you wouldn't pin me down to dates. It was somewhere in the interim of 1939 and 1943, as I recall.

Now—

Q. Have you heard of that operation since 1943?

A. I had it. It was my operation.

Q. Did you stop it in 1943?

A. That is what I say—I don't want to be pinned down to exact dates. It is around that period.

Q. At least it was stopped by 1945?

A. Yes.

1968 Q. And how many of these farmers have tunnels that they use for dehydrating onions in the off season?

A. I've never made a survey of the farms; but there are quite a number.

Q. More than one hundred?

A. Well, I wouldn't be pinned down to one hundred. I would say that there was more than 25.

Q. More than 25?

A. Yes.

Q. At least 25?

A. I would say so. I would qualify that statement by "I would want to check", because I haven't visited these farms for 10 years.

Q. But these 25 have had their tunnels for how long?

A. Prune driers since early twenties.

Q. And am I correct in assuming that these 25, or at least 25, farmers could have gone to a bank and got a bank loan as you described in your direct testimony and commenced dehydrating onion and garlic if they had elected to?

• • •

1970 By Mr. Hays:

Q. Is it your testimony that anyone can borrow up to 50 per cent on an inventory?

A. That's what I said, if you have an inventory of onion —I mentioned onion and garlic—you can borrow up to 50 per cent of your cost. Anyone.

Q. Anyone?

A. That has that product.

• • •

1973 By Mr. Hays:

Q. Now, let's go back. What is your testimony with reference to this borrowing?

A. I stated that if you had produced a million pounds of onion and a half a million pounds of garlic, and you had it in inventory, and it cost you $600,000 to produce, you could take that inventory and borrow 50 per cent of its value at a bank—but you had to have it in inventory before you can borrow.

Q. Oh, you had to have it bought and prepared and stacked in your warehouse, is that it?

A. That's right. You cannot borrow on inventory before you have an inventory.

* * *

1974 San Francisco, California
October 24, 1960

1975 PROCEEDINGS

Hearing Examiner Kolb: The hearing will come to order. We will proceed.

Mr. Walker: At this time, your Honor, with the Court's leave, I would like to read into the record an offer of proof in relation to the testimony given by Jaquelin H. Hume, Executive Vice-President of Basic Vegetable Products, Inc.

Hearing Examiner Kolb: You may proceed.

Mr. Walker: If permitted to do so, respondent would expect to prove the following facts through Jaquelin H. Hume, Vice-President of Basic Vegetable Products, Inc.: One, the types of experimental dehydration equipment installed at the King City plant of Basic Vegetable Products, Inc.; two, that Basic Vegetable Products, Inc. has obtained since 1951 a large number of new types of equipment for use in planting, harvesting, storing of raw material, preparing dehydrating, finishing, warehousing and shipping

onion and garlic products at its plants and has spent substantial sums for this purpose; three, Gentry has not since 1951 obtained or used any new equipment in planting, harvesting, storing of raw material, preparing, dehydrating, finishing, warehousing and shipping onion and garlic that Basic does not also have.

Hearing Examiner Kolb: Mr. Walker, you can't prove by that witness what Gentry did. He would not know
1976 what Gentry had done apparently.

Mr. Walker: No, your Honor, but this is the only way I can state it for this reason: I would have to ask of Mr. Hume the names of each one of the various types of new equipment that he has installed since 1951 and then through Gentry, as I will be doing in any event, I will bring out the kind of new equipment that they have installed since 1951 and then the comparison of the two would show this fact, but since you do not know what kind of new equipment Basic has installed since 1951, all I can do is make the offer of proof in this generality.

Hearing Examiner Kolb: You may proceed.

Mr. Walker: Four, Sun Spiced Vegetables Inc. and American Potato Co. have substantial dollar sales, assets and net worth; five, Basic has been able to adequately finance its operations and capital expansion program through borrowing from banks in each year since 1951.

* * *

1988 Mr. Walker: At this time, Your Honor, I would like
1989 to offer in evidence Respondent's Exhibits 163 to 169 for identification, inclusive.

Mr. Hays: Your Honor, I object to the offer of these documents in evidence.

In order for these documents to be admissible, it must be shown that the underlying data from which they were obtained is admissible. Unless I have that underlying data before me to study and analyze, I am unprepared to cross-

examine this witness who has stated certain conclusions with reference to these documents.

I submit that unless this data is furnished me, these documents which are now being offered are hearsay, have no probative force for the reason that the underlying documents have not been furnished and are documents, if admitted, are so lacking in relative liability that no finding can be made upon them.

Mr. Walker: Your Honor, the obtaining and placing in evidence in the Section 7 cases of what has been termed as market share data has been a procedure that has been followed in almost every one of the Section 7 cases that I am aware of.

We already have in evidence in this record, Your Honor, some data relating to the pounds sales of dehydrated onion and garlic by these various producers.

Mr. Hays, in the course of the presentation of the Government's case, placed in evidence through Mr. Jones
1990 of Simplot Company, through Mr. Jones, also, of the Puccinelli Company, and through Mr. Sparling or Mr. Hume, I forget which, of the Basic Company, and through officials of the Gentry Company certain data which had no better, as a matter of fact not as complete a foundation, and this material was received in evidence.

It is unfortunately, Your Honor, misleading data because of the fact that it was prepared for fiscal years of the various companies involved and, therefore, makes an accurate comparison of year by year market shares impossible.

• • •

1995 Hearing Examiner Kolb: I take exception to your statement that this is the same data that has been received in other cases. I know of no other case before the Commission in which the data has been received without underlying data being made available.

Of course, I am not personally familiar with what hap-

pened in each case, but I do know what happened in the Crown Zellerback Case.

1996 I refused to accept the tabulation until the underlying data was produced and the Commission ordered the production of it with certain restrictions. I think that was the case where the respondent wanted the information and I think if this was turned around, you would want this information to check these figures and I think you are entitled to it.

So under these circumstances, I cannot receive these documents until or unless that data is made available.

Mr. Walker: It will be made available and I am making that offer in Court. The underlying data is available to counsel for inspection.

• • •

2009 WILLIAM LESTER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

2010 A. William Lester.

Q. Where do you live, Mr. Lester?

A. 8427 North Bennett Drive, Stockton, California.

Q. What is your occupation, sir?

A. I am the engineer, purchasing agent, sanitarian, for Frank M. Wilson Company, Inc.

Q. Where is that company located, sir?

A. Stockton, California.

Q. And the address, sir?

A. Waterloo Road and Warding Way.

Q. Waterloo Road and Warding Way?

A. Right.

Q. And what business is the company engaged in?

A. Processing fruits and vegetables.

Q. To whom are those products sold, Mr. Lester?

A. Well, we sell through brokers; we sell through buying organizations.

We have our own sales department, which sells to individual retail stores and direct to distributors.

Q. Under whose labels are those products sold, sir?

A. Under our own label, primarily Nuggett and Cock Robin, and then we sell through private labels.

Q. Now, Mr. Lester, have you obtained for us certain information in regard to sales activities of your company?

A. Yes.

2011 Q. Approximately what percentage of your business is private label packing, as opposed to packing under your own label, sir?

A. About one-third of our packing is under our own label, and two-thirds private label.

Q. During what period of time has your company sold any of its products to any units of Consolidated Foods Corporation?

A. Since Consolidated was formed.

Q. Which of your products have you sold to Consolidated?

A. All of them.

Q. And have you sold products under your own label, or have you packed under Consolidated's private label?

A. No, Consolidated is all private label business.

Q. You have not sold any of your Nuggett or Cock Robin label products to Consolidated?

A. No.

Q. What was the approximate volume of your sales to Consolidated in 1958, sir?

A. It runs between 350,000 and 400,000 dollars a year.

Q. And what was the approximate volume of your total sales in 1958?

A. Our total sales are between seven and seven and a half million dollars.

Q. How long have you been purchasing agent for the Frank M. Wilson Company, Inc., sir?

A. Since 1946.

2012 Q. In which of your products, Mr. Lester, do you use dehydrated onion and dehydrated garlic?

A. In our catsup, hot sauce, cocktail sauce and chile sauce, and in our stewed tomato pack.

Q. In which of your products do you use capsicum, sir?

A. Catsup, hot sauce, chile sauce and cocktail sauce.

Q. Have you ever sold any stewed tomatoes to Consolidated?

A. We sell less than a thousand cases a year.

Q. Who has made the decisions as to your basic source of supply for dehydrated onion, dehydrated garlic, and capsicum since 1950?

A. I have.

Q. From what source have you purchased your dehydrated onion and garlic?

A. Gentry and Basic.

* * *

2013 (The document referred to, heretofore marked for identification Respondent's Exhibit 172, was received in evidence.)

By Mr. Walker:

Q. Mr. Lester, to the best of your recollection, did you purchase any dehydrated onion or garlic from Basic in the years 1946 to 1948, inclusive?

A. No, we did not.

Q. Why did you buy all of your requirements of

2014 dehydrated onion and garlic from Gentry in the years prior to 1949, then?

A. When I came to work there we had, or Mr. David House had been buying from Gentry for years, and I just

continued the policy.

Q. And what did you find in the years shortly after you came there and continued, the policy of buying from Gentry, as to Gentry's quality and service?

A. It was good.

Q. Who was the man who represented Gentry with your company in making sales to your company—I am sorry—in those years?

A. Mr. Joel Springer.

Q. The first name is Joel, J-o-e-l?

A. Yes.

Q. Springer, S-p-r-i-n-g-e-r, Sr.?

A. Yes.

Q. Who was Mr. Springer?

A. Springer is the Gentry broker in this area.

Q. And what was your relationship with Mr. Springer?

A. Very good.

Q. I am sorry?

A. Very good.

Q. What kind of dehydrated onion and garlic did you buy from Gentry in the years 1946 to 1958?

A. We bought powdered onion and powdered gar-
2015 lic, and there was a—it was a chopped onion which we used in our chile sauce. We bought that in 1948 and 1949.

Q. Now, Respondent's Exhibit 172, Mr. Lester, shows that in 1949 you started giving business to Basic. Why was that?

A. At that time Basic came out with a granulated onion and garlic which was a solution far better than the powdered onion and powdered garlic which Gentry was able to offer. Consequently, we switched to that company.

Q. And what products did you use this granulated onion and granulated garlic in?

A. Our hot sauce and catsup.

Q. Were your purchases from Basic in the years 1949 and 1950 granulated onion and garlic?

A. Yes, with one possible exception. There may have been some onion chips in there for the chile.

Q. Now, according to Respondent's Exhibit 172, you bought no onion or garlic in 1951 from either of these companies. Why was that, Mr. Lester?

A. In 1951 we started using a prepared mix which was made by the William Stange Company.

Q. And did this mix that you have described contain the granulated onion and garlic?

A. Yes, it did.

Q. Why did you decide to use this spice mix?

A. It was simpler to use, less chance of making 2016 errors, and we later found out it was cheaper.

Q. Do you still use Stange Spice Mix?

A. Yes, we do.

Q. Are all of your requirements of dehydrated garlic included in that mix?

A. Yes.

Q. Now, what kind of onion did you buy from Basic in 1952 and 1953?

A. '52 and '53, we started in buying a white onion chip for our stewed tomato pack.

Q. Did you start packing stewed tomatoes in 1952?

A. To the best of my knowledge we did.

Q. Now, Respondent's Exhibit 172 shows that you went back to purchasing your requirements of dehydrated onion from Gentry in 1954. What kind of onion was that?

A. It was white onion chips.

Q. Why did you switch to Gentry for your source of supply for white onion chips in 1954?

A. We had been buying some Basic in a galvanized iron drum which required a deposit. They paid the freight back

on it, and we paid the freight in.

Gentry offered to meet the freight rates to Vacaville, and supply the product in a fibre drum which would require no deposit and we would not have to worry about the return.

Q. Were there any other reasons for your shift to 2017 Gentry as the source of supply for dehydrated onion in 1954?

A. No.

Q. Now, according to Respondent's Exhibit 172, you purchased no dehydrated onion or garlic in 1955. Why was that?

A. We carried over enough in 1954 to carry us through the season.

Q. And, of course, you needed no garlic because you obtained that in the spice mix, is that right?

A. Right.

Q. From what source do you obtain your capsicums, Mr. Lester?

A. The—at the present time it comes in the mix.

Mr. Walker: Your Honor, I regret that I only have one copy of the next exhibit. Before I show it to the witness I would like to show it to you so that you have an opportunity to read it before I ask the witness any questions on it.

This is Respondent's Exhibit 100, which has already been received in evidence.

Were you able to make out this handwriting at the bottom? It states, "We hope that Gentry onion gives trouble in the"—"used in stewed tomatoes,"

That is the best I can do to make that out.

Hearing Examiner Kolb: Very well.

Mr. Walker: Could it be "spices"?

Hearing Examiner Kolb: No—

Mr. Walker: Well, this Respondent's Exhibit 100 2018 is already received in evidence, as I stated earlier,

and it is a call report prepared by a salesman for Basic Vegetable Products, Inc., dated April 27, 1954, and purports to reflect a call made this salesman on the F. M. Wilson Company, Inc.

By Mr. Walker:

Q. Mr. Lester, will you please examine Respondent's Exhibit 100, and let me know when you are finished reading it.

A. Okay.

Q. Now, I will direct your attention, Mr. Lester, to the third paragraph of Respondent's Exhibit 100, at the bottom of the page, which states as follows:

> "Lester's boss said that if other things were equal Wilson onion and garlic business should go to Gentry because Consolidated Food Corp. was Wilson customer."

Did you say this to the Basic salesman?

A. Yes.

Q. Who was your boss that is referred to there, Mr. Lester?

A. Mr. David House.

Q. What is his position with the company?

A. He is president of the corporation.

Q. Now, Mr. Lester, were all things equal between Basic and Gentry when you gave your onion business to Gentry in 1954?

A. No.

Q. Why not?

A. The variation in the drum situation.

2019 Q. That you have already described in your prior testimony?

A. Right.

Q. Did Mr. House's comment, as stated in Respondent's Exhibit 100, have any effect upon your purchases from Gentry in 1954, or since that time?

A. No, it did not.

Q. Since 1954 has Basic been equal to or better than Gentry in price, service and quality?

A. No, they haven't, on account of the drum situation.

Q. After you made this statement to the Basic salesman in April of 1954, did you have any further conversations, or other conversations with Mr. House, about buying from Gentry?

A. No.

Q. Did you ever tell him that you had started buying from Gentry?

A. No.

Q. Did you ever repeat Mr. House's statement to any Gentry personnel?

A. No, I didn't.

Q. Now, Mr. Lester, we have told the Hearing Examiner that we have discussed this case with the witnesses. Before you were contacted in connection with your appearance as a witness, and laying aside the conversation with Mr. House, and the Basic salesman, about which you have testified, had you ever talked with anyone about a rela-
2020 tionship of any kind between your company's sales to Consolidated and your purchase of dehydrated onion, dehydrated garlic, or capsicums?

A. No.

Q. Have you had any kind of a communication on that subject, other than the one you have testified to?

A. No.

Q. What effect has the fact that Consolidated is a customer of Frank M. Wilson Company had on the volume on your price of dehydrated onion, dehydrated garlic, and capsicums, from Gentry, since 1950?

A. None.

Mr. Walker: Your witness, Mr. Hays.

Cross Examination

By Mr. Hays:

Q. Mr. Lester, when did you first become aware of the fact that Consolidated Foods Corporation was one of Wilson's good customers?

A. To the best of my knowledge, it was when Mr. House brought the subject up. I had never paid too much attention to it before.

Q. And in what year was this?

A. 1954, I believe.

Q. Do you agree with the statement that if other things are equal Wilson's onion and garlic business should go to Gentry because Consolidated Foods Corporation is
2021 one of Wilson's good customers?

A. Yes, I agree with it.

• • •

2022 JOHN A. BROTHERS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. John A. Brothers.

Q. And where do you live, Mr. Brothers?

A. 5801 Chabot Court, Oakland.

Q. That is C-h-a-b-o-t?

A. Yes, sir.

Q. What is your occupation, sir?

A. General purchasing agent for California Packing Corporation.

Q. I see.

Mr. Walker: Do you have the name of the company,
2023 California Packing Corporation?

The Reporter: Yes, sir.

By Mr. Walker:

Q. Where is that company located, Mr. Brothers?

A. The main office is in San Francisco.

Q. And what is the address, sir?

A. 215 Fremont Street.

Q. In what business is California Packing Corporation engaged?

A. The canning of fruits, vegetables, fish, the packing of dried fruits, and certain specialty items.

Q. Where are the company's plants located?

A. California, Oregon, Washington, Idaho, Utah, Illinois, Wisconsin, Minnesota, New Jersey, Florida, Texas, Alaska, and the Hawaiian Islands.

Q. To whom do you sell your products, Mr. Brothers?

A. To wholesale grocers and chain stores.

Q. Through what channels do you market your product?

A. Our own sales offices and brokers.

Q. Under whose labels do you sell your products?

A. Mostly Del Monte, very little privately.

Q. Very little private label?

A. Yes.

Q. Mr. Brothers, have you ascertained for us certain facts regarding your company's sales to Consolidated Foods Corporation?

2024 A. Yes, sir.

Q. During what period of time has California Packing Corporation sold any products to any unit of Consolidated Foods Corporation?

A. Well, at least 1946.

Q. Under whose label were those products sold?

A. Mostly Del Monte.

Q. Approximately how large were your company sales to Consolidated in the fiscal years ending 1957, 1958 and 1959?

A. In 1956 it was approximately $1,700,000. In 1957 it was approximately $1,700,000, and in 1958 it was approximately $2,100,0(

Q. And what were the approximate amounts of California Packing Corporation total sales in each of those same years?

A. 1956, $290 million; 1957, $325 million; and in 1958, $345 million.

Q. What has been the trend of your company's sales to Consolidated since 1950?

A. Up.

Q. What has been the trend of your company's total sales since 1950?

A. Up.

Q. Now, Mr. Brothers, in which of your products do you use dehydrated onion and garlic?

A. Tomato catsup, chile sauce, stewed tomatoes 2025 and various seasoned vegetables.

Q. Who has made the decision as to your source of supply for dehydrated onion, dehydrated garlic and capsicum since 1950?

A. I have.

Q. Is this true for all plants of California Packing Corporation?

A. Yes.

Q. Do you purchase dehydrated onion and dehydrated garlic from more than one supplier?

A. Yes.

Q. Do you purchase capsicum from more than one supplier?

A. Yes.

Q. When, Mr. Brothers, did California Packing Corporation first start using dehydrated onion and garlic?

A. 1939.

Q. And from what company did you purchase your de-

hydrated onion and garlic at that time?

A. Basic Vegetable Products.

Q. Why?

A. Because they had worked for years introducing the item to us and spent a great deal of time in research with our own research department on the item, and when we got into using it we were very pleased with the results.

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2026 (The document referred to was marked Respondent's Exhibit No. 173 for identification and was received in evidence.)

By Mr. Walker:

Q. Now, Mr. Brothers, did you first purchase dehydrated onion from Gentry prior to 1951?

A. Yes.

Q. What was the reason for your first purchase of dehydrated onion from Gentry?

2027 A. We were at that time, and I think it was the year 1948, processing onions in glass in the Northwest Division and, at the same time, growing the raw product on our own ranches or farms.

We discontinued packing the item and found ourselves with a very considerable surplus of dried onions. We approached Basic in hopes that they would take the onions off our hands and reprocess into dehydrated onions.

It was not convenient for them to do so, so we approached Gentry whom we had had a considerable amount of association, knowing that they also processed dehydrated onions, if they would take care of the matter for us, which they did.

And I believe, in looking at this tabulation and my recollection, that the first thousand pounds of the item that we purchased came from the onions that they helped us to dispose of.

Q. You mentioned, Mr. Brothers, a prior considerable

association with Gentry, that is, prior to the time of the incident that you have described.

What was that prior considerable association?

A. Well, the purchase of certain capsicum products, and that quality of service and things were just excellent.

Q. Mr. Brothers, how far back do you, that is, your company, have records showing the amounts of your purchases of dehydrated onion and garlic?

2028 A. Only since 1954.

Q. Now, approximately what percentage of your dehydrated onion requirements did you purchase from Gentry in 1954?

A. Forty per cent.

Q. Has the percentage of your purchases of dehydrated onion from Gentry increased or decreased since that time?

A. Decreased.

Q. What was the approximate percentage in 1958, sir?

A. Nineteen per cent.

Q. From what company have you purchased most of your requirements of dehydrated onion?

A. Basic.

Q. Why?

A. Well, they have been our traditional supplier. They have been very, very helpful to us, in the development of new products such as seasoned green beans.

Q. Why have you continued to give some of the business to Gentry?

A. Well, we felt, in the first place, a certain obligation in the way they took care of our surplus onion crop. Second, they have also been very helpful to us in certain research work in which capsicum products have come into play.

Q. And what has been your evaluation of the service and quality of dehydrated onion and garlic that Gentry has provided since you have been purchasing from them?

2029 A. Excellent.

Q. Would you please describe in a little more detail, please, Mr. Brothers, the work that Gentry has done with you in connection with research that you mentioned in your testimony?

A. Well, we have been attempting for some time to produce certain capsicums that we use in a more or less fresh state, dehydrated state, and Gentry has been working on that for a considerable number of years along with our own research people.

Secondly, they also have been helpful in our development of new products in which we use capsicum.

Q. From what company do you buy—well, strike that, please.

Do you buy any of your cayenne pepper from Gentry?

A. Yes.

Q. And would you please describe, Mr. Brothers, how you go about purchasing your cayenne pepper from Gentry?

A. Well, first, cayenne pepper is an item that is very susceptible to infestation, and we have a very close quality control of the item that we use in our product.

Oh, I would say around in about April Gentry sends us samples of cayenne that they have available to use which are thoroughly tested by our research department, and Gentry sets aside the approved lots, and only ships from those lots as we order the material out.

2030 Q. And has this service that Gentry has provided played any part in your choice of Gentry as the source of supply for other products?

A. Very definitely.

Q. Including dehydrated onion and garlic?

A. I would say so, sure.

Q. Now, Mr. Brothers, directing your attention to Respondent's Exhibit 173, this shows that in 1955 you purchased 117,500 pounds of dehydrated onion from Gentry, which is a figure considerably larger than for the other years.

Why did you buy this amount of dehydrated onion from Gentry in 1955?

A. Well, in the first place, early in the year Gentry offered us a very advantageous contract pricewise for our coming requirements, and in addition our requirements of the item were growing larger, particularly in that year, due to the fact that we decided to pack tomato products in our midwest division.

Q. About what percentage of your dehydrated onion requirements did you buy from Gentry in 1955?

A. I would say about 36 per cent.

Q. Now, Mr. Brothers, are there any reasons, other than those you have already given, for purchasing dehydrated onion from Gentry over the years?

A. No.

2031 Q. From what company have you purchased dehydrated garlic since 1950?

A. Basic.

Q. Mr. Brothers, we have informed the Hearing Examiner that we have discussed this case with the witnesses prior to their testimony. Before you were contacted in connection with your appearance as a witness in this case, have you ever talked with anyone about a relationship of any kind between your company sales to Consolidated and your purchase of dehydrated onion, dehydrated garlic or capsicums?

A. No, except that I talked to our president, Mr. Luck, about the fact that Consolidated was taking over Gentry.

Q. Well, what was that conversation, please, Mr. Brothers?

A. Well, I had seen something that indicated that Consolidated and Gentry were merging, and I asked Mr. Luck whether that fact should have any bearing on our purchases of products from Gentry.

Q. What did Mr. Luck say?

A. He could see no reason why we should discontinue.

Q. Why did you ask Mr. Luck about this, Mr. Brothers?

A. Well, for all I know, Consolidated was a competitor of ours and I wanted to know whether there was any feeling on the part of our management that we should not purchase from a competitor.

Q. Have you had any kind of a communication on
2032 this subject other than the one that you have just described?

A. No.

Q. Mr. Brothers, what effect has the fact that Consolidated is a customer of California Packing Corporation had on the volume of your purchases of dehydrated onion and capsicums from Gentry since 1950?

A. None.

Q. When did you first learn, Mr. Brothers, that Consolidated was a customer of California Packing Corporation?

A. This year.

Q. Mr. Brothers, would you please describe what part your laboratory plays in your purchasing of dehydrated onion and garlic?

A. Well, at my request, if you want to consider another source of supply for a new approach, we will ask the supplier to send samples to the laboratory for evaluation as to the successfulness from a quality standpoint.

In addition, our laboratory examines each delivery of the item in the consideration to be sure that they meet our quality standards.

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2033 *Cross Examination*

By Mr. Hays:

Q. Mr. Brothers, did the various plants of California Packing Company do any purchasing of dehydrated onion and dehydrated garlic during the period from 1950 through 1958?

A. Not as such. The California division and I am talking about our operations in the East Bay issue their own purchase order, but they do strictly on my instructions.

In other words, we have a certain quantity of onion powder or garlic. They are told to purchase so much from so and so and so much from so and so and so much from so and so by me.

Q. In other words, they have no choice in the matter?

A. They have no choice.

Q. During the period from 1958, was there ever a time that you entered into contracts which covered a certain quantity of dehydrated onion and garlic that which you used in any given year during that period?

A. Yes.

Q. And what happened in—

A. We wrote the contract on the basis—

Mr. Walker: Excuse me—

A. (Continuing)—of up to so many pounds. The reason for that being that at the time we are talking about contracts, we don't know just how many cases of a given
2034 item that we use those products in, the sales department will require.

Secondly, we don't know what the crops are going to be so we have to be covered for a maximum and it is distinctly understood with the people that we contract that it is up to a certain quantity.

Q. And—

A. And we are not committed to that quantity.

Q. And what were the years when you entered into contracts for larger amounts of dehydrated onion and garlic than you actually used?

A. Well, I'd say in all of the years that we contracted, it would be in every one of those years, and I don't remember whether we contracted in every year or not, sir, but I am pretty certain that we did from the time we started to

buy the products.

Q. When you— strike that, please.

When it becomes apparent to you in any given year that you are not going to need all of the dehydrated onion or dehydrated garlic that you have contracted for, how do you determine from which of the suppliers you will select will make the purchases?

A. Well, I think the best way to answer that, sir, will be to say that when we, we have a certain figure in mind that we would give Gentry and as indicated, it is very much the smaller of our total requirement.

Then any ups or downs would fall under contracts with our other suppliers.

2035 Q. I see. In other words, it has been your determination to give Gentry a certain amount—

A. (Interposing) That is correct.

Q. —a certain amount of your total needs?

A. I wouldn't say it that way; to give them a certain figure.

Q. What is that figure, sir?

A. I would prefer, unless I am required to answer it, not to give the figure.

• • •

Q. In your direct testimony, did you refer to the figures on Respondent's Exhibit 173 as being a certain percentage of your total purchases of dehydrated onion?

A. Correct.

Mr. Walker: In certain years, Mr. Hays.

The Witness: That is right.

By Mr. Hays:

Q. And I believe the year that you started with was 1954, is that correct?

A. That's right.

2036 Q. What was your testimony with reference to the percentage for 1954 which the 79,250 pounds on Re-

spondent's Exhibit 173 represents?

A. 40 per cent.

Q. And didn't you say it was 40 per cent for each of the years after 1954?

A. I did not.

Q. What was your testimony in that point?

A. I believe I was asked what the percentage was in 1958, and my answer was 19 per cent. Then later, I was asked what the percentage was in 1955, and my answer was 36 per cent.

Q. You have purchased all of your dehydrated garlic during those years from Basic?

A. Correct.

Q. From 1939 until 1949, you purchased all of your requirements of dehydrated onion and garlic from Basic, is that correct?

A. Yes.

Q. Except for the 210 pounds of garlic shown on this exhibit?

A. Yes.

Q. Was one of the reasons that you purchased these products from Basic during these years the fact that they had worked with you experimentally in the use of these products?

A. During that particular period, I wouldn't say that that was correct. They introduced the item to us.

Q. Yes.

2037 A. It took them, if I remember correctly, some four or five years to convince us that we should do away with our old process of using fresh onions and get into the dehydrated end of it, and they worked very closely with our own research people in trying to convince us to make the transition.

When we did, we were very, very satisfied with the result of the operation, and we just continued to purchase from

Basic. However, in those years, our purchase of, or our use of those items, let's say, were comparatively small in relation to the use in later years.

Q. Now, have the Gentry people worked with your company in a similar fashion with reference to dehydrated onion or garlic?

A. No.

Q. Have they worked with your company in a similar manner with reference to capsicums?

A. Yes, they have.

Q. Now, will you describe just what they did and when they did it?

A. Oh, gosh, I don't know whether I can give you any specific details as to time, but for some years now we have been trying to develop a substitute for a green chili that we use in our tomato sauce. We brand that product fresh and ship it to all our tomato product operations throughout the country. It is quite a costly one. We have been trying to work with Gentry to develop an acceptable form of
2038 green chili either dehydrated or—what do they call it —commutated or some word of that type of technical term that I am not certain of.

Q. And for about how long a period has this been going on?

A. I would say probably five or six years.

Q. I refer to your direct testimony in connection with the fresh onions that your company had on hand.

A. Yes.

Q. And that was in the year 1949?

A. I think it was 1948 and the reason I say that is that I am pretty darn sure that the onions would be maturing in the fall of '48 and to process them and use the products, which we did, would have to come the following year.

Q. And what quantity of onions was involved?

A. I can't answer the quantity; I don't remember.

Q. Gentry did purchase all of those fresh onions?

A. They did not purchase the onions. They processed them for our account and charged us for the amount of onion powder that they were able to get from them on the basis of cost rather than selling prices.

Q. By virtue of this operation, did you have a more friendly feeling for Gentry than you had before?

A. No, I wouldn't say that the feeling was any more friendly. It had always been friendly.

Q. Did that operation help to build good will?

A. Yes, very definitely.

2039 Q. Was it a factor in your purchases of dehydrated onion from Gentry in 1950?

A. Yes, sir.

Q. When this operation took place, that is, the dehydration of these fresh onions, did you ask Consolidated to do that for you?

A. No.

Q. You did not ask them to?

A. No.

Q. Did they offer to?

A. No.

Q. Well, how did it come about that they did dehydrate these onions that you had?

A. Well—

Mr. Walker: I am going to object. Excuse me, Mr. Brothers. I am going to object to the question. There is nothing in this record anywhere that shows Consolidated Corporation did any dehydration of anything in 1950. I wonder if Mr. Hays is referring to Gentry, and if he is, the acquisition took place in 1951.

Mr. Hays: You are quite correct, Mr. Walker. Thank you.

By Mr. Hays:

Q. When did you first learn that Consolidated Foods purchased products from your company?

2040 A. This year.

Q. This year?

A. Yes.

Q. Now that you know that fact, will that in your mind increase the good will of Consolidated insofar as your purchases are concerned?

A. No.

* * *

By Mr. Hays:

Q. In other words, the fact that Gentry processed some fresh onions that you were stuck with involved good will but the fact Consolidated Foods presently purchases

2041 from your company will not increase the good will, is that correct?

A. Would you please restate the question?

Mr. Hays: Read it back, please.

(The reporter read the question as follows:

"In other words, the fact that Gentry processed some fresh onions that you were stuck with involved good will but the fact that Consolidated Foods presently purchases from your company will not increase the good will, is that correct?")

By Mr. Hays:

Q. I will restate the question.

If I understand your testimony correctly, in 1948-1949, Gentry built good will with you by processing some fresh onions which you had on hand and couldn't get rid of and that built good will with you, is that correct, sir?

A. Yes.

Q. Now, the fact that Consolidated Foods—strike that, please.

The fact that you now know that Consolidated Foods purchases from your company will not increase the good will that you have for that company, is that correct?

A. It will not increase the good will.

* * *

2043 San Francisco, California
October 25, 1960

2044 PROCEEDINGS

• • •

2046 JOEL H. SPRINGER, JR., was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please.

2047 A. Joel H. Springer, Jr.

Q. Where do you live, Mr. Springer?

A. 771—33rd Ave., San Francisco.

Q. What is your occupation, sir?

A. Manufacturers' agent, or food broker.

Q. What is the name of your company?

A. Joel H. Springer Company.

Q. Where is that company located?

A. No. 7 Front Street.

Q. In San Francisco?

A. San Francisco.

Q. What food companies do you represent, as broker or agent, Mr. Springer?

A. Gentry Division, Consolidated Foods Corporation; Baumer Foods, Incorporated; Monterey Beach Packing Company, Incorporated; Burbank Packing Company.

Q. In what business are Baumer, Monterey Beach Packing Company and Burbank Packing Company engaged?

A. Baumer Foods is a packer of Louisiana Hot Sauce, pepper-type items, canned okra, yams, southern type dishes.

Q. And Monterey Beach Packing Co.?

A. Monterey Beach Packing Co. is a pickle packer.

Q. Burbank Canning Co.?

A. A packer of canned hominy.

Q. During what period of time has your company
2048 represented Gentry as a broker, sir?

A. Since 1933.

Q. During what period of time have you operated the business?

A. Since my father passed away in 1953.

Q. In what area do you serve as Gentry's broker or agent?

A. Northern California, which runs roughly from the Oregon line down to a line, if you drew it roughly across, from about Fresno through to Monterey.

Q. Would you please describe, Mr. Springer, how you conduct your business as Gentry's broker?

A. Well, I call on all the prospects and customers and attempt to sell them merchandise, or additional merchandise, send my orders in to Gentry. And Gentry, in turn, does all the invoicing and pays me a commission on the sales.

Q. Does Gentry also employ a salesman in this area?

A. Yes, sir.

Q. What is the salesman's name, sir?

A. Stewart.

Q. On what basis do you and the Gentry salesman divide your efforts, Mr. Springer?

A. Well, he calls on some direct accounts; we both call on the majority of the other accounts, sometimes separately, sometimes working together, covering the whole general territory.

Q. Approximately how many companies do you call
2049 on each year in selling or attempting to sell Gentry dehydrated onion and garlic?

A. I would estimate in the vicinity of perhaps 300 to 350.

Q. And approximately how many Gentry customers are there in your area?

A. I would say about 100 to 125 at the most.

Q. Mr. Springer, in your calls on behalf of Gentry, has anyone ever stated to you that they will not buy products from Gentry or do not like to buy products from Gentry because it is a part of Consolidated Foods Corporation?

A. Yes.

Mr. Hays: I object to that as hearsay.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Walker: The first question is whether anyone has said that, Your Honor. I would like the opportunity to argue the question of hearsay in connection with the actual statement as to what was said.

I will argue it now if counsel prefers.

Your Honor, we have had placed in the record in connection with the case, or counsel supporting the complaint, a large number, a very large number of call reports, letters, documents of various kinds, in which the author referred to the fact that other people whom they had contacted said certain things.

In some instances, Your Honor, these call reports
2050 and letters went beyond the point of being single hearsay, but contained statements that individual A, to whom they talked, told them that individual B said that individual C had said something.

There was double and triple hearsay in those documents.

At the time this first came up, Your Honor, I urged very strongly on the Court that our right of cross-examination was very seriously hampered by this procedure of proving up the case through the placing in evidence of documents containing this double and triple hearsay.

It left us with no recourse, Your Honor, once the documents were received in evidence, except to call these people ourselves and get them on the witness stand so that we

could ascertain the facts.

I now have a witness on the stand, Your Honor, who has talked to customers and has heard what they say. In connection with the Government's case they did not go even that far. They just put in the documents that somebody wrote so there was no right of cross-examination.

I submit to Your Honor that the testimony of this witness, as to what people said to him, while surely hearsay, Your Honor, and there is no question about it, is much better testimony, much better evidence than the kind of evi-

dence that was permitted to go in in connection with
2051 the Government's case.

Now, for that reason, Your Honor, I submit that it is, I believe, prejudicial to Respondent to permit counsel supporting the complaint to make his case out through hearsay, double and triple hearsay, and then to deny Respondent the opportunity to use hearsay in opposition when it is his turn to present his case.

Hearing Examiner Kolb: Well, Mr. Walker, you are

not being precluded from putting the evidence in.
2052 The objection is to the general question which counsel for the Commission will have no opportunity of taking under any circumstances and will not be able to rebut what this man may say. When you pin point it down to whom he talked to and what was said at that time, then, there is something which counsel can go into.

Mr. Walker: I am going to do that, your Honor. I was just asking a general question at the outset so that we could proceed in a more orderly fashion.

* * *

2056 By Mr. Walker:

Q. Mr. Springer, have you ever had occasion in the performance of your work as a broker for the Gentry Division of Consolidated Foods Corporation to call on the

Richmond-Chase Company in San Jose, California?

A. Yes.

2057 Q. In what business is that company engaged?

A. They are a large canner of fruits and vegetables.

Q. And what type of customers does Richmond-Chase sell its products to?

A. Wholesale groceries, chain stores and other institutions.

Q. Did there come a time, Mr. Springer, in connection with your calls on Richmond-Chase Company when anyone at that company discussed Consolidated Foods Corporation with you?

A. Yes, sir.

Q. When was that, sir?

A. I would estimate that to be around 1953 or '54.

Q. Who discussed it with you, sir?

A. Mr. Ed Mitchell.

Q. What is his position with the company?

A. He is the technical director.

Q. Does he do the buying for Richmond-Chase?

A. He makes the decision, yes.

Q. On that occasion that you have described, Mr. Springer, would you please state what Mr. Mitchell said to you about Consolidated Foods Corporation?

• • •

2058 The Witness: He stated that as far as he was concerned, Consolidated Foods was competitor of theirs due to their owning the U.S. Products Corporation at San Jose also.

By Mr. Walker:

Q. Did he say anything about buying from Gentry in relation to this, Mr. Springer?

• • •

2059 The Witness: Only that he wouldn't buy from Gentry any longer because of Consolidated Foods owning U.S. Products Corporation, who was a competitor of theirs.

By Mr. Walker:

Q. Have you continued to call on Richmond-Chase?

A. Periodically.

Q. Has any statement to the same effect as the one you testified Mr. Mitchell made in 1953 or 1954 been repeated since that time?

Mr. Hays: Objection. Hearsay.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Walker:

Q. Has Mr. Mitchell on any other occasion than 2060 the one that you have described discussed Consolidated Foods Corporation with you?

A. Yes, sir.

Mr. Hays: Objection. Hearsay.

Hearing Examiner Kolb: Overruled.

By Mr. Walker:

Q. What was said on that occasion, sir?

Mr. Hays: Objection. Hearsay.

Hearing Examiner Kolb: Overruled.

A. Fundamentally the same statement was made, due to being a competitor.

• • •

2062 By Mr. Walker:

Q. Mr. Springer, Respondent's Exhibit No. 174 shows that in the years 1950 to 1953 Richmond-Chase bought dehydrated onion from Gentry.

How do you account for this, in view of your testimony that they do not buy from Gentry because it is a part of Consolidated?

A. I would say that they probably weren't cognizant of the fact that Gentry had become a division of Consolidated

Foods until that time.

Q. Mr. Springer, in connection with the performance of your duties as the broker for Gentry, have you had occasion to call on the Teasdale Packing Company in San Jose, California?

A. Yes.

Q. In what business is that company engaged, sir?

A. They are a canner of dry-pack foods, such as beans, items of that nature.

Q. To what types of customers does Teasdale Packing Company sell its products?

A. Wholesale grocery houses, institutional jobbers, chain stores.

Q. Did there come a time, in connection with your calls on Teasdale Packing Company, when anyone at that company discussed Consolidated Foods Corporation with you?

A. Yes.

2063 Q. When was that, sir?

A. I believe that was just about 1951, '52, or somewhere right in that general area.

Q. Who was it that discussed this with you?

A. Mr. Barry.

Q. What is his position with Teasdale?

A. Purchasing agent.

Q. On that occasion, Mr. Springer, what did Mr. Barry say to you about Consolidated Foods Corporation?

Mr. Hays: Objection. Hearsay.

• • •

2065 A. He said to the effect that he didn't see why he should buy from a competitor, because his competition in that area was the Fred M. Drew Company, which was a division of Consolidated Foods, packers of the same type merchandises, themselves.

• • •

2067 Q. Have you continued to call on the Teasdale Packing Company since the discussion with Mr. Barry that you have described?

A. Not in recent years.

Q. Why not?

A. Well, he was so emphatic on the subject that I felt that I could spend my time more valuably calling on other accounts.

Q. Have you, in the performance of your duties in connection with the sale of Gentry's products, called upon the Tiedemann & McMorran Company, of San Francisco?

A. Yes, sir.

Q. In what business is that company engaged?

A. They are a wholesale grocery house, institutional jobber.

Q. To what types of customers does Tiedemann & McMorran sell its products?

A. Retail grocery stores, restaurants, institutions.

Q. In the course of your calls on Tiedemann & McMorran in an effort to sell them Gentry's products, did anyone at that company ever discuss Consolidated Foods Corporation with you?

A. Yes.

Q. When was that, sir?

2068 A. That has been off and on from time to time.

Q. Who has discussed it with you?

A. Mr. Lee Pierson.

Q. What is his position with that company?

A. Purchasing agent.

Q. What is the substance of what Mr. Pierson said to you on those occasions on this subject?

Mr. Hays: Objection. Hearsay.

Hearing Examiner Kolb: The objection will be overruled.

A. He stated that he felt that Consolidated Foods was

a competitor due to their Monarch Division, Monarch being in the same type of business that they are locally.

Q. Did he say anything else?

A. And that he didn't feel that he would want to buy from a competitor.

• • •

2069 (The document referred to, heretofore marked for identification Respondent's Exhibit 176, was received in evidence.)

By Mr. Walker:

Q. Have you continued to call on Tiedemann?

A. Yes, sir.

Q. Has Tiedemann & McMorran bought any other products than dehydrated onion and garlic from Gentry in recent years?

A. Yes, they have bought one item in the capsicum line, and occasionally a few canned pimentos.

Q. Have you ever been given any reason why they continue to buy some onion, garlic and capsicum from Gentry?

A. On the capsicum item they happen to be buying an item that we do not have any particular competition on. It is a specialty item and we are the only ones they can get it from. They repack that item under their own label.

On the canned goods, such as pimentos or green chiles, it has been a case when the market is fairly low. On other occasions we might be two cents below the market and they would occasionally buy from us.

As to onion and garlic, the only thing I can say
2070 there is that the possibility that perhaps they had trouble with a source of supply and they were not able to get merchandise, or that they had a few customers that insisted on Gentry merchandise.

Q. What is your estimate of the current annual requirement of dehydrated onion and garlic for Tiedemann & McMorran?

A. I would have to place that—perhaps ten to 12 thousand pounds per year.

Q. Upon what do you base that estimate, sir?

A. My knowledge of working with the firm for quite a few years, watching their expansion and growth.

I sell them other merchandise, and I have seen them grow in those lines through the other principals that I represent.

• • •

2071 Q. Mr. Springer, directing your attention to Respondent's Exhibits 177 and 178 and 179, which you have in front of you, have you examined those documents?

A. May I have a few moments to read them?

Q. Please.

(Short pause.)

A. Yes, I have read them.

Q. Did you and Mr. Curtis make the calls on Tiedemann & McMorran as described in the call reports?

A. Yes, sir.

Q. Do they accurately reflect the substance of what was said on the occasions of those visits?

A. Yes.

Q. Did you actually write these?

A. No.

Q. Who did?

A. Mr. Curtis.

• • •

2074 Q. Now, Mr. Springer, have you had occasion to call upon United Grocers, Ltd., in the performance of your duties in selling Gentry products?

A. Yes.

Q. Where is that company located, sir?

2075 A. Their main office is in San Francisco, branches throughout Northern California.

Q. In what business is that company engaged, sir?

A. Wholesale grocery house.

Q. To what type of customers does United Grocers sell its products?

A. Primarily to small businesses, with a small institutional business.

Q. Where is their business actually conducted, sir?

A. The main office is located here in San Francisco.

Q. Do they have any branches, sir?

A. Yes.

Q. Where are those branches located?

A. Fresno, Sacramento, Redding, Richmond, Oakland, Salinas, and they have some small Cash-and-Carry branches here, also. Do you wish those?

Q. No. I think that is enough. There are some small Cash-and-Carry branches in other cities, is that right?

A. About another half dozen.

2076 Q. Did there come a time, Mr. Springer, while you were calling on United Grocers in connection with your performance of your duties, selling Gentry products, when someone at that company discussed Consolidated Foods Corporation with you?

A. Yes.

Q. When was that, sir?

A. Oh, perhaps four or five years ago.

Q. Who at that company discussed Consolidated Foods Corporation with you?

A. Mr. Dick Heinrich.

Q. What is his position, sir?

A. At that time, he was the purchasing agent primarily in charge of private label buying.

Q. What did Mr. Heinrich say to you on that occasion on the subject that you have mentioned?

Mr. Hays: Object as hearsay.

Hearing Examiner Kolb: Overruled.

A. Well, it was at that time that we cut some can pimentos and he liked them very much. He glanced at the

label and smiled at me and said that he had instructions from the firm that they were not to buy anything from the Consolidated Foods Division as we felt that they were competitors.

By Mr. Walker:

Q. That was canned pimentos?

A. Canned pimentos, yes, sir.

2077 Q. Does Gentry sell any dehydrated onion and garlic to United Grocers?

A. At the present time, no.

Q. Does United Grocers use very much dehydrated onion and garlic?

A. A very, very small amount.

Q. Now, Mr. Springer, in your opinion, is there any company where you have been able to sell more of any of Gentry's products because of the fact that Gentry is a part of Consolidated Foods Corporation?

A. No.

Q. Have you ever mentioned Gentry's relationship with Consolidated in an effort to help sell Gentry's products to any company?

A. No.

Q. Has anyone at any company that you have called on in selling Gentry products ever said to you that they buy from Gentry because it is a part of Consolidated?

Mr. Hays: Object as hearsay.

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2079 Q. Do you recall, Mr. Springer, obtaining dehydrated onion business from the Frank M. Wilson Company in 1954?

A. Yes, sir.

Q. From whom at the Wilson Company did you obtain that order?

A. Mr. Lester, Bill Lester.

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2082 Q. Have you regularly called in the performance of your duties, selling Gentry products, on the McClintock-Stern Company?

A, Yes, sir.

Q. Have Gentry sales of dehydrated onion and garlic to McClintock-Stern increased or decreased over the years?

A. Increased.

Q. When was that, sir?

A. I would say within the last two years.

Q. What is the reason for that increase, Mr. Springer?

A. We have been cooperating quite strongly with McClintock-Stern by referring some of our smaller accounts to them. Also, some smaller firms that are McClintock-Stern customers for their regular line of spices, we suggested that they might pick up their onion and garlic from them at the same time and that would avoid setting up a new type of an account on their books and so forth and it would make it simpler to purchase those items.

Q. Does McClintock-Stern distribute Gentry products in this area under the Gentry label?

A. Very, very small.

2083 They do most of their distributing under their own Claremont brand.

Q. Does Gentry have a distributor in this area in the sense of a company or individual that sells dehydrated onion and garlic products under the Gentry label?

A. No.

Q. McClintock-Stern is a distributor in a sense that they sell Gentry dehydrated onion and garlic but under their own label, is that right?

A. Yes.

Q. Mr. Springer, do you use the name of Consolidated Foods Corporation on your letterheads or your business cards?

A. No, I do not.

Q. Why not?

A. Well, from my personal standpoint, I thought it was a little detrimental and I didn't want to call it to a buyer's attention.

From some of the experiences I have had as a salesman, it isn't a good policy to be on the defensive to start with.

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2084 *Cross Examination*

By Mr. Hays:

Q. Mr. Springer, what was the name of your company in 1950?

A. 1950?

Q. Yes, sir.

A. Joel H. Springer Company.

Q. And in 1950, how many people did that company employ?

A. Well, it was my father and myself.

Q. Is that all?

A. Yes, sir.

Q. And where was your office in 1950?

A. I believe that was 200 Davis Street.

Q. In San Francisco?

A. Yes.

Q. In 1950, were you a manufacturer's representative for the Gentry Company?

A. Yes.

Q. At the present time how many people are employed by your company?

A. Just myself, sir.

Q. And for how long a period has your company

2085 been a one-man company?

A. Well, when my father started in business, it was a one-man operation until I came out of the Army and went

with him. Then, there were two of us until the time he passed away in 1953.

Q. And since 1953, the company has just consisted of you, is that right?

A. As far as actual operations of the company, yes. Actually, the business is a partnership with my mother.

Q. Now, do you have any secretarial help?

A. No, sir.

Q. Do you have any telephone help?

A. Just an answering service.

Q. Now, since 1953 when your father passed away, has it been your custom to leave your office and go about your area selling, calling on prospective customers?

A. Yes.

Q. And for how long a period do those trips last?

A. They never last longer than two days.

Q. And in your business, do you receive orders that are phoned in from customers?

A. Yes.

Q. Do you receive complaints that are phoned in from customers?

A. Oh, occasionally.

Q. How are those two matters handled when you are not present?

2086 A. A phone message is left for me, and I return the call when I get back to my office.

Q. In 1954, approximately how long were you out of the office in that year, out and away from your office?

A. I can't answer that because I don't know.

Q. Well, approximately how many trips did you make away from the office to call on customers?

A. I am in and out of my office all day, sir, in and out several times a day.

Q. In 1950, what was the sales area of your company?

A. Northern California.

Q. Northern California?

A. Yes.

Q. And by Northern California, will you describe it more specifically?

A. Well, theoretically, Northern California is defined as from the Oregon line south, to a line roughly of Fresno; for example, for Gentry, it is from Fresno across to Monterey; with other firms that I represent, it might extend as far as Bakersfield-Santa Barbara line.

Q. Now, in 1950, did you make any trips—how far north did you go in attempting to sell this Gentry product?

A. Sacramento, California.

Q. Is that the furthest north you went?

A. Yes, anything north of that is usually handled 2087 by mail or phone. There's very little up in that area.

Q. And how far East did you go?

A. Stockton, California.

Q. How far is that from San Francisco?

A. Oh, I believe in highway miles about 87, 90 miles, something of that nature.

Q. And how far south did you go in 1950?

A. Fresno, California.

Q. In 1950, did the Gentry salesman accompany you on your calls to customers?

A. I don't recall on that, sir. I don't believe Gentry had a salesman actually assigned to this territory at that time.

Q. Now, in 1951, after Gentry was taken over by Consolidated, did you continue to sell in this area that you described for 1950?

A. Yes, sir.

Q. Were there any changes in the area that you sold in?

A. Not that I recall.

Q. Since 1951, have there been any changes in the area that you have described?

A. Not in the area covered, no, sir.

Q. In other words, you cover the same area now that you did in 1950?

A. To the best of my recollection, yes.

Q. Now, when was the first time that a salesman
2088 of Gentry Consolidated accompanying you in calling on customers?

A. I can't recall an actual time. I know that they did have a man that worked out of Los Angeles that occasionally came up but I can't tell you the time at all.

Q. You don't know?

A. I don't recall.

Q. Well, can you tell me when the first time you remember a salesman of Gentry Consolidated accompanying you in calling on a customer?

A. I just can't honestly answer the question. I don't recall.

Q. Who is the salesman that accompanies you at the present time?

A. Stuart W. Curtis.

Q. And for how long has he accompanied you?

A. I am trying to recall now. It is either three or four years that he has been assigned to this territory, approximately.

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2089 Q. Can you recall the name of the Gentry Consolidated salesman that accompanied you in calling on customers prior to the time that Mr. Curtis became the salesman that did sell?

A. Yes, Martin Anderson.

Q. Martin Anderson?

A. Yes.

Q. And can you recall for what period of time he accompanied you in calling upon customers?

A. I would say approximately a year.

Q. A year?

A. Yes.

Q. Can you recall the name of the Gentry Consolidated salesman that accompanied you in calling on customers prior to Mr. Anderson performing that function?

A. Prior to Mr. Anderson, there was a man working out of Los Angeles. I believe it was Mr. George Clausen, Jr.

Q. Can you recall any year in which Mr. Clausen accompanied you in calling upon customers?

A. I believe there is one period in late 1953, shortly after my father passed away.

Q. Can you recall any other period?

A. Not offhand, sir.

Q. Can you recall any other salesman of Gentry Consolidated that accompanied you?

A. No, sir.

2090 Q. Now, in your sales area since 1950, have you sold all of the dehydrated onion and the dehydrated garlic to Gentry customers in this area?

A. No.

Q. Has the salesman of Gentry Consolidated made some sales in this area?

A. Yes.

Q. Now, how do you—strike that, please.

Will you describe the circumstances where you call on customers and distinguish those circumstances from those in which the Gentry Consolidated salesman calls on customers?

A. I don't understand exactly what you mean, sir.

Q. Well, how does it come about that you don't call on all of the customers in this area?

A. Well, some of the firms are house accounts that Gentry has handled direct themselves.

Q. And you don't call on any of the house accounts in this area?

A. No, sir, I do not.

Q. Since 1950, have the house accounts remained the same or have there been some added and some taken away?

A. Some of the house accounts have been returned to me; I don't believe any of them have been taken away.

Q. Since 1950, what class of customers have you called upon?

A. What class?

2091 Q. Yes, sir.

A. Well—

Q. In what type of business were the customers that you called on; what business were they engaged in?

A. Anybody that is a potential user of onion and garlic or capsicums; manufacturers, canners, meat packers, wholesalers of canned goods.

Q. Now, in 1950, you were employed by Gentry. How were those sales handled?

A. Just a case—if I might correct something, Mr. Hays, I have never been employed by Gentry.

I represent Gentry.

Q. In 1950, when you represented Gentry, how were the sales that you made handled?

A. I would write the orders, mail them into the main office and they would be filled and invoiced from there.

Q. They would be invoiced from—

A. Gentry.

Q. —Gentry to the customer?

A. Yes.

Q. And after Gentry was merged with Consolidated, how were those sales handled?

A. Still in the same manner, sir.

Q. Still in the same way?

A. Yes, sir.

2092 Q. Were the invoices the same type of invoices or were they different?

A. To the best of my recollection, it was the same in-

voice form unless there was a change in setup on them which occasionally takes place through a printer who would change to improve the forms.

As far as I know, it is the same invoice.

Q. After Gentry was taken over by Consolidated, did you inform any of your customers of the change in ownership of Gentry?

A. I don't recall, sir. It may have come up in conversation or something of that nature, but I honestly don't recall having gone out of my way to state that to anyone.

Q. Now, before this merger, did the customer remit to Gentry?

A. Yes.

Q. And after the merger, how did the customer remit?

A. To Gentry.

Q. To Gentry in Los Angeles?

A. Yes.

• • •

2093 Q. Do you know how your customers made out checks in payment for dehydrated onion and dehydrated garlic prior to the merger of Gentry and Consolidated?

A. About the only way I can answer that question is that the only checks that I have ever seen is when there has been a past due account that it has been necessary for me to go out and collect and then as even today I have seen checks just made out to Gentry.

Q. Have you seen any such checks made out to Gentry and Consolidated Foods?

A. No, sir, I have not.

Q. Have you seen any made out to Consolidated Foods?

A. No, sir, I have not.

Q. I take it when Mr. Clausen first began calling with you on customers, you had to introduce him to the customer?

A. Yes.

Q. How did you introduce him?

2094 A. Well, to the best of my knowledge or recollection, I just introduced Mr. George Clausen, Jr. of Gentry, Los Angeles.

Q. Did you make any reference to the fact that Gentry was a part of Consolidated Foods at that time?

A. I don't recall, sir.

Q. In 1950, what type of business was the Richmond-Chase Company engaged in?

A. Well, they were canners of fruits and vegetables.

Q. Did they continue to can fruits and vegetables in 1951 and 1952?

A. To the best of my knowledge.

Q. And did they continue to can fruits and vegetables up until 1958?

A. To the best of my knowledge.

Q. In 1950, is that all they did was to can fruits and vegetables?

A. I believe they also had a dried fruit operation that they just recently gave up.

Q. What type of dried fruit operation was that?

A. I am not familiar with that end of the business, sir.

2095 Q. Did you in 1950 sell the 5,000 pounds of onions which is reflected on Respondent's Exhibit 174, to Richmond-Chase Company?

• • •

A. No, prior to 1953, to my father's passing away, he was handling the general San Jose area. I didn't make that sale, no.

By Mr. Hays:

Q. In other words, during the period from 1950 to 1953 you did not call upon the Richmond-Chase Company?

A. I called on them more or less as a good-will call. My father was handling the business with them at that time.

Q. And who did you talk to—how often did you call?

A. During that period?

Q. Yes, sir.

A. I would have to hazardly guess. I would say possibly, two, three or four times a year.

Q. You couldn't state specifically how many times you called upon them in 1953?

2096 A. I couldn't specifically state that, no, sir.

Q. Could you specifically recall any conversations with anyone in Richmond-Chase that occurred in 1953 when you called on them?

A. No, sir.

Q. Could you specifically recall any conversations with people at Richmond-Chase in 1952?

A. No, sir.

Q. You answer is, "No"?

A. No, sir.

Q. Could you specifically recall any conversations with people at Richmond-Chase in 1951?

A. No.

Q. Could you specifically recall any conversations with people at Richmond-Chase in 1950?

A. No.

Q. What is the basis for your assumption that during the period from 1950 to 1953 the people at Richmond-Chase probably weren't cognizant of the fact that Consolidated Foods was a competitor of theirs?

A. Well, I believe they were cognizant of the fact that Consolidated Foods was a competitor of theirs, yes, but as to whether they knew Gentry was a part of Consolidated Foods—I am just hazardly guessing, but I don't believe they realized it.

2097 Q. And what is the basis for your assumption on that point?

A. It hadn't been mentioned to me by them and I certainly hadn't mentioned it to them.

Q. The mere fact that they didn't mention it to you is the basis for that assumption?

A. Based on what occurred later.

Q. In 1950, '51, '52 and '53, can you tell me the type of containers that Richmond-Chase received their purchases in?

A. No, sir, I cannot.

Q. Was there any change in the packaging of dehydrated onion and garlic after Gentry took over Consolidated, Consolidated took over Gentry?

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2098 A. I can't recall, sir.

By Mr. Hays:

Q. Do you know whether there was any reference to the packaging or the papers that accompanied the shipment or the invoice? Do you know whether or not there was any reference anywhere to indicate that Consolidated Foods was connected with Gentry?

A. Yes, I believe that appeared on the labels, very small, under Gentry. I believe it said, "A division of Consolidated Foods Corporation."

Q. On what labels?

A. Labels on the cans, containers.

Q. In 1950?

A. Not in 1950.

Q. When?

A. I couldn't honestly answer that.

Q. 1951?

A. I can't honestly answer that. I would assume that it would be when they ran out of their stock of labels and

had new ones made, which would be normal procedure in the food business.

Q. Would that be 1952?

A. I have no idea what their inventory labels 2099 might have been, sir.

Q. In other words, you sold Richmond-Chase some commodity with a label on it during this period?

A. To 1953 my father sold them the merchandise.

Q. All right, your company then.

A. (No response.)

Q. During the period from 1950—strike that, I will start over.

During the period from 1950 through 1953, did your company sell any products to Richmond-Chase that had a label on them?

A. Yes.

Q. What products?

A. Onion, garlic.

Q. Will you describe how that product was packaged?

A. I don't recall whether it was in drums or in tins, but in any event it no doubt had a label on it specifying Gentry brand, and whom packed by.

Q. Did it specify the fact that Gentry was a division of Consolidated Foods?

A. It does today, sir, but I don't recall at what time that actually started appearing on the labels, sir.

Q. And at the time it started appearing on the labels wouldn't it be logical that Richmond-Chase would then know that Gentry was a division of Consolidated Foods?

* * *

2100 A. To try and give a fair answer to this, sir, I don't believe that Mr. Mitchell at Richmond-Chase, our purchasing agent, would go out to the warehouse to see what a label said.

Mr. Hays: Well, now, I submit that is not responsive.

The Witness: Well, what I mean by that reply is that I do not believe the purchasing agents—well, they very infrequently go out into the warehouse and examine
2101 the label on merchandise. I don't know how they would arrive at this, whether they heard it in the trade, or anything else.

By Mr. Hays:

Q. Isn't it important that moisture be kept from dehydrated onion that is shipped?

A. Yes.

Q. Isn't it normal for a purchasing agent to inspect the shipments that he receives to see that moisture and other matter has not gotten into the shipments?

A. I would say, no, it is not normal for the purchasing agent.

Q. Is it normal for someone who works for him to do that?

A. Someone in the plant who is assigned the job of that nature, an employee.

Q. During the period from 1950 to 1953, did you receive any complaints from the people at Richmond-Chase about the quality of the product?

A. I don't recall, sir.

Q. Did you receive any complaints from the people at Richmond-Chase during this period about the service in connection with these products?

A. I don't recall offhand, sir.

Q. During this period did you receive, that is, during the period 1950 through 1953, did you receive any complaints from the people at Richmond-Chase about the
2102 fact that they had trouble contacting you on the phone?

A. Not that I recall, sir.

Q. Mr. Springer, how do you assume that subsequent to 1953 the people at Richmond-Chase found out about the

fact that Gentry was a division of Consolidated Foods?

A. I have no idea how they—I would rather not even make an assumption. I don't know how they found out.

• • •

Q. During the period from 1950 through 1953, did your company negotiate with Richmond-Chase Company for Consolidated Foods any requirements contracts relating to onion or garlic?

A. I don't recall that there were any contracts. Whether it was in contracts or in the form of spot orders, I do not recall.

Q. Do you have your records for that period still available?

A. I believe I do, but I am not sure as to whether they would show contract booking or spot order.

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2108 Q. Do you today represent Consolidated Foods?

A. Yes.

Q. And could that representation be terminated tomorrow?

A. Today.

Q. I take it that if it could be terminated today,
2109 it could likewise be terminated tomorrow if it continued that long?

A. Yes.

Q. Do you know how long the labels on Consolidated shipments of dehydrated onion and garlic have borne the legend, "Gentry, a division of Consolidated Foods"?

A. I have no idea whatsoever.

Q. Is that true to date?

A. It is to date, to the best of my knowledge.

Q. Can you recall whether it did in 1958 or not?

A. I can't tell you, sir.

Q. On direct examination you testified, I believe, with

reference to your letterheads. Was your testimony in that connection that your letterheads do not show that you represent Consolidated Foods?

A. No, my letterheads just read, "Direct Factory Representative, Gentry."

Q. And why is that?

A. I have found that the less mention of Consolidated Foods I make, the better off I am in the long run.

Q. Well, today they are going to find out about Gentry being a division of Consolidated Foods, when they receive shipment, aren't they?

A. That all depends on the size of the firm, Mr. Hays. On a small firm, yes, it would be noticed. On a larger firm I wouldn't be surprised if there is some—in fact, just
2110 recently this year I had a fellow notice it for the first time.

Q. Who was that, sir?

A. A small institutional jobber over in Oakland.

Q. He was a large firm, was he?

A. He is one of the two larger ones over there.

Q. And what is his name?

A. Colonial Foods Supply of California.

Q. Isn't that one of your larger customers?

A. No, not one of the larger, but one of the largest in that field in that area.

Q. Then how does he relate to Richmond-Chase? Is he larger?

A. Oh, no, he is considerably smaller than that. His competition in that field would be Monarch Finer Foods.

Q. And what was Richmond-Chase's competition?

A. United States Products Corporation, U. S. Products Corporation.

Q. Well, there is nothing in that name to indicate that that is a division of Consolidated Foods, is there?

A. I don't recall how they show it. I don't know whether

they show it as a division or not.

Q. Now, your direct examination with reference to United Grocers, Ltd., where are they located?

A. The main office is in San Francisco, and branches all over Northern California.

Q. And what type of business are they in?

2111 A. Wholesale groceries.

Q. Wholesale groceries?

A. Yes.

Q. And how long have they been in business, since 1950?

A. Oh, much longer than that.

Q. And where are they in competition with Consolidated Foods?

A. At the Monarch Finer Foods label.

Q. I mean geographically, sir.

A. At San Francisco.

Q. Is that the only place?

A. Well, Monarch's office and warehouse is in San Francisco, although they work throughout Northern California.

Q. And the Monarch Division does the same thing that United Grocers does?

• • •

A. Essentially the same. Monarch works for salesmen, whereas United Grocers sells with an order book, and Monarch is with salesmen. They are both selling to the same retail trade.

By Mr. Hays:

Q. That is grocery stores?

2112 A. Yes.

Q. Now, did you sell to United Grocers for Consolidated Foods any dehydrated onion or garlic?

A. Very, very small amount, only a fill-in occasion when they needed something for a special customer.

Q. And did you sell anything to them prior to 1951?

A. I believe so.

Q. How much?

A. It is still the same small amount in the onion and garlic line.

Q. Have you sold similar small amounts since Gentry was acquired by Consolidated?

A. On and off again is the only way I can answer that without looking at a record on it.

I know there hasn't been anything recently at all.

Q. Well, has there been any change in the volume of your sales to this company since the acquisition occurred?

A. I would only have to hazard a guess and say that it was small to begin with. It is probably less today.

Q. How small?

• • •

2113 A. Onion and garlic is extremely small. Without having a record in front of me, it is down in the low hundreds of pounds.

By Mr. Hays:

Q. There has been no change in the sales of dehydrated onion and garlic since the merger?

A. I would say we don't have any to date.

Q. Well, what about 1951? Was there any change in 1951?

A. That—not that I recall.

Q. Was there any change in 1952?

A. I can't recall, sir.

Q. Was there any change—did you sell them anything in 1952?

A. I can't tell you offhand, sir.

• • •

2114 Q. Did you sell them any onion and garlic in 1952?

A. I can't recall just out of thin air. I would have to look at the records to see what specific times. It is a very small amount, if anything at all.

Q. For how long a time did you call on United Grocers?

A. For how long a time?

Q. Yes, you personally.

A. I have been calling on United Grocers since 1946.

Q. Have you ever talked to anyone at United Grocers about a Gentry-Consolidated relationship?

A. The only man was that man that was mentioned in my earlier testimony when he brought the subject up. That was one buyer.

Q. And what did he say?

A. He said, as I recall it, he had instructions from upstairs that he bought nothing from a Consolidated Foods Division, that he felt that it was competition. Now, this dealt with their private label buying. They have other buyers in other areas that operate independently. This was primarily with private label.

Q. Private label what, onion and garlic?

A. No, in this instance I believe our earlier testimony was with reference to pimentos, chiles, canned goods.

2115 Q. And who is this man?

A. Dick Heinrich.

Q. Dick Heinrich?

A. Yes.

2116 Q. Now, did Dick Heinrich also purchase onion and garlic for this company?

A. No, sir.

Q. Who purchased those products for this company?

A. Those products that were purchased by the San Francisco office here was by their institutional man, Mr. George Ingram.

Q. I see.

Did you have any conversations with him about the Gentry-Consolidated relationship?

A. It was never mentioned.

Q. When did you have this conversation, you recall?

A. I'd have to hazard a guess at about three or four years ago because I believe this is Gentry's—what—fifth year in canned pimento or fifth or sixth year; so it has been since that time.

Q. And where did it occur?

A. Here in San Francisco.

Q. Where in San Francisco?

A. United Grocers.

Q. Where in United Grocers?

A. In the office of the buyer.

Q. And where is that located?

A. 685 Sixth Street.

Q. Was anyone else present?

A. Mr. Curtis of Gentry was with me at the time 2117 and also in the cutting room was the secretary-manager who recently passed away of United Grocers, Harry Reidt.

Q. During the period from 1950 to 1958, did you sell McClintock-Stern any dehydrated onion or garlic?

A. Yes.

Q. For how long a time during that period?

A. I would estimate for just about the whole general period with perhaps the exception of a few months or a year during one spot in there.

Q. When was that?

A. I don't recall offhand.

Q. During the period from 1950 to 1958, did you call upon Tiedemann & McMorran and sell or attempt to sell dehydrated onion?

A. Yes.

Q. You personally?

A. Yes.

Q. And did you have any conversation with anyone in that company with reference to the Gentry-Consolidated relationship?

A. Yes.

Q. When did you have that conversation?

A. As far as a specific date, I can't pull it out, but it has occurred periodically over a period of several years. It has been mentioned over a period of several years.

Q. When was the first time it was mentioned?

2118 A. I can't pin that down, sir; I don't recall.

Q. And who did you have those conversations with?

A. Mr. Lee Pierson.

Q. Mr. Lee Pierson. How long has he been with that company?

A. I don't know when he started, but he was there when I started calling on them in 1946.

Q. Was Consolidated Foods in competition with Tiedemann & McMorran in 1951?

A. Yes.

Q. Was it in competition with them in 1952?

A. Yes.

Q. Was it in competition with them in 1953?

A. Yes.

Q. And thereafter?

A. Yes.

Q. In 1950, what type of business was Tiedemann & McMorran engaged in?

A. Wholesale groceries, selling to retail stores, restaurants and institutions.

Q. And what type of dehydrated onion products did they purchase from you?

A. I can't recall at the moment as to the specific years. At one time we were selling them sliced onions in number 10 tins. We supplied them with powdered onion, powdered garlic, granulated onion and granulated garlic, but I

2119 can't give you the specific years.

Q. Now, this sliced onion in No. 10 tins was the

principal product you sold to them during the period from 1950 to 1953, isn't that correct?

A. Well, I wouldn't be able to answer that without checking to be sure on what the products were because there was a period in there—I don't know it was during that period of years when we were only selling them the sliced onions and there was another period when we only sold them the onion and garlic powder, and I don't recall just out of my head what years that is.

Q. Now, the sliced onion in No. 10 tins was resold by Tiedemann & McMorran to what class of trade?

A. Restaurant trade.

Q. The restaurant trade?

A. Yes.

Q. And what was their sales area in 1950?

A. Well, all of Northern California. They have a branch in Sacramento and they also have a branch in Reno, but I can't recall offhand just when they acquired that.

Q. And what division of Consolidated Foods were they in competition with?

A. Monarch.

Q. Weren't they also in competition with the Gentry Division?

A. Tiedemann?

2120 Q. Yes.

A. No, we don't sell to restaurants.

Q. Gentry does not sell to restaurants?

A. I don't sell to restaurants at all.

Q. I am not asking you whether you sell to restaurants but whether Gentry sold to restaurants in 1954 direct?

A. I can't answer that other than the fact, not to my knowledge.

Q. Did you have any conversation with anyone at Tiedemann complaining about the fact that Consolidated

Foods have started selling to restaurants and institutions direct.

• • •

2121 Mr. Hays: Well, the Gentry Division of Consolidated Foods.

The Witness: To the best of my knowledge, there have been no sales in my territory that I know of to a straight restaurant.

By Mr. Hays:

Q. I am asking you whether you had any complaint by anyone at Tiedemann?

A. Not that I recall.

Q. Now, is a restaurant an institution?

A. No, an institution would be something in the nature of a hospital or something in that category.

Q. Does Gentry sell dehydrated onion direct to institutions?

A. Not to my knowledge.

Q. Did you have any—what is the institutional trade insofar as dehydrated onion is concerned?

A. Well, there is a thin dividing line in there somewhere. This is only my interpretation of it: I think an institution is a hospital or resort area, things of that nature, as opposed to regular restaurants.

2122 Q. You never had any complaints?

A. Not that I recall.

Q. Did you ever have any conversations about the fact that Gentry was selling direct to restaurants and institutions, dehydrated onion?

A. Not that I recall, sir.

• • •

Q. Mr. Springer, did you ever call on Gerber's on 801 Ninth Avenue, Oakland, California?

A. Not since 1955.

Q. Did you make sales to them of dehydrated onion prior to 1955?

A. No, I never sold them anything, sir.

Q. Are they currently one of Gentry's house accounts?

A. Yes, sir.

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2124 JACK E. TEETERS, was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Jack E. Teeters.

Q. Where do you live, Mr. Teeters?

A. In Turlock, California.

Q. What is your home address, sir?

A. 412 Crane Avenue.

Q. What is your occupation, Mr. Teeters?

A. I am secretary-treasurer of the Puccinelli Packing Company.

Q. And during what period of time have you served in that position?

A. Since October 1959.

Q. Where is that company located, Mr. Teeters?

A. Its main office is in Turlock, California.

Q. And where are the plants located, sir?

A. In Turlock and in Livingston, California.

Q. Will you please describe the basic activities carried on by your company?

A. It is a dehydrator of vegetable products including onion and garlic and a canner of vegetables and one fruit.

Q. What vegetables other than onion and garlic

2125 are dehydrated by your company?

A. Celery, carrots, red and green pepper, aspara-

gus; those are the principal items.

Q. Where do you do the dehydration of onion and garlic?

A. The dehydration is performed at the Livingston plant.

Q. And what operations are carried on at the Turlock plant?

A. The onion and garlic is finished there. By that, I mean ground or chopped, milled and packed.

The dehydration of all vegetables is carried on at Turlock and the canning operations are also at Turlock.

Q. Except that you do not dehydrate onion and garlic at Turlock?

A. That is correct.

Q. Where do you market your dehydrated onion and garlic?

A. I market it throughout the United States.

Q. How do you market your dehydrated onion and garlic and other products?

A. Exclusively through brokers.

Q. Where are those brokers located, Mr. Teeters?

A. In a number of cities including Boston, New York, Philadelphia, Pittsburgh, Cincinnati—strike Cincinnati. Cleveland, Chicago, St. Louis, Kansas City, Dallas, Portland, Oregon, Seattle, San Francisco and Los Angeles.

Q. Do you have any brokers—do you have or have you had any brokers in Louisville?

2126 A. Yes, we have a broker in Louisville.

Q. What about Cincinnati; did you formerly have a broker there?

A. We have heretofore maintained a warehouse but not within my recollection have we had a broker there.

Q. What about Denver?

A. We have representatives in Denver, yes.

Q. In Minneapolis?

A. Also.

Q. To what types of customers do you sell dehydrated onion and garlic, Mr. Teeters?

A. To repackers, food manufacturers, food distributors and in some cases to Governmental agencies.

Q. During what period of time has the Puccinelli Company dehydrated onion and garlic products?

A. I believe on a commercial basis since 1946.

Q. Would you please state the production capacity of your plant at Livingston that you use for dehydrating onion and garlic?

A. In approximate amounts—in finished pounds, the capacity for onion is approximately 2,500 pounds a day and for garlic it is about 1,500 pounds per day.

Q. What type of dehydrating equipment do you use for the onion and garlic at Livingston?

A. That is principally a tunnel method, gas fired
2127 tunnel, but certain of the processes are accomplished in a continuous dryer.

Q. It is a continuous conveyor dehydration dryer?

A. Correct.

Q. How many dehydrating tunnels do you have at Livingston?

A. 14 in operation.

Q. Are you currently building any more?

A. Yes, four additional.

Q. To what extent in general terms, Mr. Teeters, are your dehydration processes mechanized?

A. To the greatest extent that we can economically mechanize them. There is the coring of the—flame peeling, the coring of onion is mechanized, the slicing is mechanized, the distribution of the material on the drying trays and the stacking of those trays on the carts is mechanized, and, of course, the cleaning of dried onions is mechanized.

Q. You use mechanical conveyors, is that right?

A. Yes, wherever possible.

Q. Have you expanded your production capacity since 1950?

A. Yes.

Q. And would you please describe the nature and extent of that expansion?

A. Well, the facilities which are used for the dehydration of onion and garlic have been expanded both in capacity and in number. Some innovation—by that I mean
2128 new equipment has been introduced, such as automatic packers, larger slicers, slicers of larger capacity and additional coring devices.

Q. Have you built any additions to your plant during this period?

A. Yes, particularly that which houses the four additional tunnels.

Q. Have you purchased any new equipment for this work since 1950 other than the ones you have already described?

A. Yes.

Q. Would you describe that new equipment, sir?

A. There have been new mills, new grinding mills, new dehumidifiers, new aspirators for cleaning dehydrated material.

Q. Does the Puccinelli Packing Company have any patents on equipment used in dehydrating onion and garlic?

A. Yes, certain equipment.

Q. Is that equipment used in the preparing or the dehydrating or the finishing of the product, sir?

A. To my knowledge it is restricted to slicing.

Q. Does—I am sorry, strike that, please.

What is the amount of capital invested in your plants used for dehydrating onion and garlic?

A. Approximately $1 million.

Q. Does Puccinelli maintain any plants abroad, sir?

A. Yes.

Q. Where?

2129 A. In Rovigo, Italy.

Q. When was that plant established?

A. 1956.

Q. And what dehydrated products are produced at that plant?

A. Garlic, tomatoes, apples.

Q. Has any dehydrated garlic produced at that plant in Italy been sold in the United States?

A. Yes.

Q. Under what label has it been sold?

A. We have repacked it, using our own labels.

Q. Mr. Teeters, are you presently producing dehydrated onion and garlic to the full capacity of your plant at Livingston?

A. Substantially, yes.

Q. Other than the items you have already mentioned, do you have any present plans to expand your production facilities at the Livingston plant?

A. Yes, we do.

Q. What are those plans, sir?

A. We are planning to install an additional or a new slicing machine and a finishing room at Livingston.

Q. In how many cities, Mr. Teeters, does your company maintain warehouse stocks of dehydrated onion and garlic?

A. Seven or eight.

Q. Could you name those cities, please?

A. Boston, New York, Chicago, St. Louis, Dallas,
2130 Cincinnati and at our Turlock plant, Louisville, and New Orleans. I think that is substantially all.

Q. Mr. Teeters, in your opinion, is Puccinelli Packing Company able at the present time to compete successfully with Basic Vegetable Products, Inc., and the Gentry Division of Consolidated Foods Corporation in the production

and the sale of dehydrated onion and garlic?

A. Yes, it is.

Q. What factors, Mr. Teeters, enable you to do so in your opinion?

A. We offer a full line of the material sold by those other companies, oftentime at more attractive prices with the, as good service as we can provide.

Q. Mr. Teeters, based on your experience in the period during which you have been working with the Puccinelli Packing Company, does the ownership and operation of Gentry by Consolidated Foods Corporation adversely affect the ability of Puccinelli Packing Co. to market its dehydrated onion and garlic products?

• • • •

2131 A. No.

By Mr. Walker:

Q. What types of raw onion does Puccinelli Packing Co. use in its dehydration of onion, Mr. Teeters?

A. Green onions, some yellow but otherwise almost exclusively white.

Q. How do you obtain those onions, sir?

A. It is by direct purchase from growers on a spot basis or as a result of contracts entered into early in the 2132 season with growers.

Q. And when you say you purchase some of these raw onion on a spot basis, is that on the open market, Mr. Teeters?

A. Yes.

2133 Q. In your opinion, Mr. Teeters, would any new producers of dehydrated onion have any difficulty in obtaining raw onion or garlic suitable for dehydration?

A. I think not.

Q. Mr. Teeters, about how many of your customers purchase over $10,000 worth in sales price of dehydrated onion and garlic in a year?

A. I would estimate 20.

• • •

2135 *Cross Examination*

By Mr Hays:

Q. Before you came to the Puccinelli Packing Company, what did you do?

A. I pursued law.

Q. Did you ever have any job before your job with Puccinelli Packing Company?

A. Yes, I practiced accounting.

Q. Where?

A. In San Francisco and Palo Alto and Southern California?

Q. For how long?

A. Approximately two years total.

Q. And you came with Puccinelli Packing Company in October of 1959?

A. Correct.

Q. As an accountant?

A. I was directly elected secretary-treasurer. Accounting was one of my functions.

Q. What were your other functions?

A. Well, I counsel the corporation, I oversee the operations of our offices, and I supervise the activities for our sales manager.

Q. Have you ever sold any dehydrated onion and garlic?

A. No.

Q. What do you have to do with production?

2136 A. Very little.

Q. Do you have a production manager?

A. Yes, sir.

Q. What is his name?

A. Louis Abbey.

Q. How long has he been with Puccinelli?

A. I should say more than five years. More than six years.

Q. And have you a sales manager?

A. Yes.

Q. What is his name?

A. Fanucchi.

Q. And how long has he been with Puccinelli?

A. Approximately four months.

Q. And did he work for Puccinelli before he became sales manager?

A. No.

Q. Who was the sales manager before him?

A. There was no one who had that title.

Q. You don't have any salesmen now; just brokers, is that right?

A. That is correct.

Q. For how long has that been true?

A. Since the inception of the company, so far as I know. There certainly have been none during the time that I was there.

2137 Q. How many people do you have employed?

A. At the moment, approximately 425.

Q. And what do they do mostly?

A. Most of them work on dehydrated vegetables.

Q. In the plant?

A. Correct.

Q. Is this dehydration season?

A. Yes.

Q. When will the season end?

A. Oh, I should say the end of November.

Q. And will you have anyone employed in the plant after November?

A. Yes.

Q. How many people?

A. Approximately 120 or 125.

Q. What will they be doing?

A. They will be processing dehydrated commodities for shipment, labels, labeling canned goods, maintenance of the plant, and prepare for renovation.

Q. Who is your superior?

A. Mr. Puccinelli.

Q. He is your supervisor, and you supervise the production manager and the sales manager, is that right?

A. That is not right.

Q. Who do you supervise?

2138 A. The office staff and, to a certain extent, the sales manager.

Q. But not the production manager?

A. That is right.

Q. To what extent do you supervise the sales manager?

A. I execute contracts for him, I determine the prices of new commodities, I handle governmental bids. Also, I supervise his paper work, if I may use that expression, that is to say, documentation, shipping documents, and I negotiate with various governmental purchasing agents with regard to purchases by them.

Q. Do you advise him as to sales techniques and methods?

A. No.

Q. How much of this dehydrated garlic has been resold in the United States in the last year?

Mr. Walker: What dehydrated garlic?

By Mr. Hays:

Q. Your plant in Italy produces?

A. I don't even think I should like to guess the answer to that.

Q. You don't have any idea?

A. I couldn't even give you an answer with any degree of accuracy.

Q. Well, let me put it this way. Why did you import this from your plant in Italy rather than sell it out

2139 of your California plant?

A. There was an insufficient amount of garlic grown and processed last year to meet our demands.

Q. And did you import any dehydrated onion from your Italian plant?

A. No, there is none produced there.

Q. Did you repack the garlic you imported from your Italian plant?

A. It was only semi-finished. Upon importation it of necessity had to be ground, cleaned and repacked.

Q. What was the extent of that finishing?

A. The garlic came in to us just as it came from the tunnel, I presume, in Italy. Therefore, it was sliced garlic.

Q. It had to be dehydrated?

A. It had been completely dehydrated.

Q. Do you plan to import any garlic from your Italian plant this year?

A. No.

Q. Why not?

A. There is a sufficient amount grown here; indeed, an oversupply.

Q. Well, I take it, then, that this supply of garlic varies from year to year, is that true?

A. For the last two years it varied.

Q. In your opinion would a company that went into
2140 the dehydration garlic business last year when garlic was short, would that company have prospered or succeeded?

A. It might not have if that had been their only commodity.

Q. What is the extent of your knowledge as to the effect of the acquisition of Gentry by Consolidated during the period from January 1, 1951, until you first became employed by Puccinelli in October, 1959, I believe?

A. I have no knowledge of the effect during that period.

* * *

2140 GEORGE EDWARD CLAUSEN, JR., was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

2141 *Direct Examination*

By Mr. Walker:

Q. Will you state your full name, please?

A. George Edward Clausen, Jr.

Q. Where do you live, Mr. Clausen?

A. 1952 Schrader Drive in San Jose, California.

Q. What is your occupation, sir?

A. I am presently the general manager of Gilroy Foods, Inc., Gilroy, California.

Q. In what business is Gilroy Foods engaged, Mr. Clausen?

A. They are engaged in the process of dehydrated onion and garlic.

Q. And in the sale of those products, is that right?

A. That is right.

Q. Were you ever employed by Gentry?

A. Yes, sir.

Q. And when was that, Mr. Clausen?

A. Approximately August 1952 through the fall of 1957.

Q. Would you please describe the positions you held when you were with Gentry?

A. For the latter half of 1952, 1953, '4, and up to about the middle of 1955 I was a salesman for the 11 western states, and then for about six to nine months during '55 and the first part of '56 I was in charge of the warehousing transportation shipments for the company, and after

2142 that I did sales planning, in other words, planning with the production for the sales in the plant, both at Oxnard and Gilroy.

Q. Mr. Clausen, was it your father, George E. Clausen, that was the president and a major stockholder of Gentry

prior to its being sold to Consolidated?

A. Yes, sir.

Q. What did you do after you left Gentry in 1957, Mr. Clausen?

A. I went to Mexico, and I spent about a year and a half in Mexico establishing a dehydrated onion and garlic plant.

Q. What was the name of the company there?

A. The name of the company, the initials were INDESA, I-N-D-E-S-A.

Q. And the full name, sir?

A. The full name is Industra, I-n-d-u-s-t-r-a, Deshidratatora, D-e-s-h-i-d-r-a-t-a-d-o-r-a, Sayeg, S-a-y-e-g, and then the initials S. A.

That is why they call it INDESA.

Mr. Walker: Off the record.

(Discussion off the record.)

By Mr. Walker:

Q. Did that company produce dehydrated onion and garlic in Mexico?

A. It produced dehydrated garlic, no onion, except, oh, perhaps a—on a small trial basis, but no volume.

2143 Q. What duties did you perform with that company, Mr. Clausen?

A. Well, I found it; I built it, I managed it, and sold its products. Just about everything.

Q. Where were the products sold?

A. In the United States.

Q. What has since happened to that company, Mr. Clausen?

A. We are now under negotiations for the sale of the majority of the stock of that company to another United States corporation.

Q. And what is that other United States corporation?

A. If I may, that is perhaps something that shouldn't be put into the record. I don't know. Since the thing is not

consumated, I would rather not say.

Q. Mr. Clausen, did there come a time after 1957 when you became interested in participating in an onion or garlic dehydration company in the United States?

A. Yes. In fact, when I went to Mexico I always had it in the back of my mind to participate in a company in the United States, in addition to the interest that I may have had in Mexico.

Q. Now, when was Gilroy Foods, Inc., started?

A. We started in the early spring of 1959.

Q. Who organized Gilroy Foods, Inc.?

A. Originally there were 15 individuals from the area of Gilroy, California.

2144 Q. When was the production of dehydrated onion and garlic commenced by Gilroy Foods?

A. The production of dehydrated garlic was in the fall of 1959. There was no onion in 1959. We started running onion this year I believe in the month of June.

Q. When was the plant built, sir?

A. The plant was built in the spring and the summer of '59.

Q. Why did the company start dehydrating onion in 1960?

A. Well, the original intent of the 15 people that started the plant was to have a garlic dehydrator with no onion, and it has only been this spring even since I have been connected with the company that we have, let's say, forced the company into the production of onion which was necessary to assist in the sale of garlic.

Q. How was the dehydrated garlic first produced by Gilroy Foods sold?

A. There was no sales program from the very inception of the company. It was not until actually they had produced a finished product available for sale before they ever started looking for a source of sales.

It was then given to Mayfair Packing Corporation of San Jose, which is a large company, in the sale of dehydrated fruits. They handle the sales or attempted to for several months without satisfactory results.

Perhaps I had better give the reason. Mayfair is
2145 primarily a sales program of brokers, and in the sale of dehydrated fruits, they had not had prior experience in onion, and garlic, which is a rather specialized product as far as the sales standpoint.

Q. Then I gather you feel, Mr. Clausen, that the sale of dehydrated onion and garlic requires specialized salesmen?

A. I think so.

Q. And why is that, sir?

A. Well, it is a matter of knowing your product thoroughly and being able to explain it not only to your buyers but to your technical people.

It is a product which, in other words, you must know your quality, your bacteria, your different analytical methods, so that you can convey this on to your buyers.

Q. How did you happen to start working with Gilroy Foods, Inc., Mr. Clausen?

A. Well, I was contacted in December of 1959 as to whether or not I would be interested in handling the sales for the company.

Q. And what happened thereafter, sir?

A. I went to the plant in January of 1960. I met with the Board of Directors, and they offered me a position of handling the sales, which I accepted.

Q. And would you explain the arrangements you worked out with Gilroy Foods, Inc., in regards to handling of sales?

2146 A. It was to be under my own company which I called the Clausen Company.

Now, this was a company designed to do all of the selling, invoicing, billing, cleaning, but not to guarantee the ac-

counts. Anything to do with the sales work, correspondence, my company took care of that.

Q. Was your company the exclusive sales agent?

A. That is right, it was.

Q. When did you start working on selling dehydrated garlic for Gilroy Foods, Inc.?

A. My first trip was about the 15th of January of this year. I went East for about four or five weeks and came back with a rather substantial number of sales.

Q. Has the ownership of Gilroy Foods, Inc., remained the same since its organization in 1959?

A. In the spring of 1960 we added an additional ten stockholders, bringing the total to 25.

Q. And are you and your father included among those stockholders?

A. Yes, we are.

Q. Now, you have testified, Mr. Clausen, that you have served as general manager of Gilroy Foods. Are you still working as the sales agent for Gilroy Foods?

A. Yes, I handle all the sales for the company.

Q. Would you describe the physicial dehydration
2147 facilities used by Gilroy Foods, Inc., when it started business?

A. Well, it is a brand new building with insulation, and practically all of the equipment is new, and specifically designed for dehydration of garlic. Then, later on, onion was added.

The building is approximately 20,000 square feet.

Q. Is the operation mechanized, sir?

A. Completely.

Q. What was the amount of the initial capital investment in Gilroy Foods, Inc.?

A. The original 15 put in $45,000 worth of stock, and the balance in notes, for a total of $130,000.

Q. Has any more capital been invested since that time?

A. There has been another—well, slightly over $100,000 brought in in the spring of this year.

Q. Now, has the plant used by Gilroy Foods, Inc., expanded since 1959?

A. Yes, this year we added two more tunnels to the original two that we had.

Q. Do you have any plans to install continuous dehydration equipment?

A. I would say that it is our plan to do so just as soon as we can get the sales to cover the added production of that type of unit.

Q. What is the present production capacity of
2148 Gilroy Foods, Inc., in terms of pounds of dehydrated onion and garlic produced, if you will, per year?

A. We could produce 500,000 pounds of dehydrated garlic and 1,250,000 pounds of dehydrated onion with our present facilities.

Q. Has Gilroy Foods, Inc., produced a capacity at its plant during 1960?

A. Yes.

Q. About what dollar volume of sales, Mr. Clausen, would 500,000 pounds of garlic and 1,250,000 pounds of onion produce?

A. Somewhere in the neighborhood of $800,000, generally.

Q. Do you have any plans to further expand your business and production of dehydrated onion and garlic?

A. I think there is quite an opportunity in the other dehydrated vegetables, and it is our hope that once we get ourselves established with onion and garlic we would expand into other vegetables.

Q. Has Gilroy Foods, Inc., encountered any problem of obtaining a supply of raw onion and garlic suitable for dehydration?

A. No.

Q. Where do you get the raw onion and garlic that you use for dehydration?

A. We obtain it from all over the state of California, including Nevada. Most of it is normally contracted
2149 ahead because of the specialized varieties which are used now by the dehydrators.

Q. Do you encounter any problem in obtaining an adequate supply of dehydrated—of raw onion or garlic in 1959?

A. No.

Q. Has Gilroy Foods, Inc., encountered any problem in obtaining an adequate labor force?

A. No.

Q. Has Gilroy Foods, Inc., encountered any problem in obtaining adequately trained personnel?

A. No.

Q. Has Gilroy Foods, Inc., encountered any problem in obtaining necessary equipment used in your production of dehydrated onion and garlic?

A. No.

Q. Now, in your opinion, Mr. Clausen, has your company been able to compete with Basic Vegetable Products, Inc., the Gentry Division of Consolidated Foods Corporation, and the Puccinelli Packing Company?

A. For practically the last five years this whole industry has been going through a rather substantial growth pattern. In the sales work that I have done in the past several months I would say there is certainly an interest in the trade for a new supplier, and to a great extent this interest and the fact that it is a growing market has helped us.

2150 Q. Has Gilroy Foods, Inc., obtained any bank financing, Mr. Clausen?

A. Yes, they have.

Q. From what bank, sir?

A. Bank of America, Gilroy Branch.

Q. Could you give us the names and businesses of a few of the owners of Gilroy Foods, Inc.?

A. Well, my dad and I are both owners. Mr. George White, who is president of the Garlic Growers Association; Trevis Barry, who is a grower and has a trucking company; Mr. Sanchez, who is the mayor of Gilroy, and Mr. Lazzarina, who is a Certified Public Accountant in Gilroy, to name a few of them.

2151 Q. Now, does Mr. Barry and Mr. Sanchez have other business interest other than Gilroy Foods, Inc.?

A. Yes, they do.

Q. You mentioned that Mr. White was president of the Garlic Growers Association; is that the California Garlic Growers Association?

A. That's right.

Q. Are any of your owners other than yourself and your father former employees with Gentry?

A. Yes, the manager was formerly with Gentry.

Q. What is his name, sir?

A. Mario Del Francesco.

Q. What position did Mr. Francesco hold with Gentry?

A. At that time I believe he was in charge of the milling and finishing of the dehydrated onion and garlic.

Q. Is Gilroy Foods, Inc., a member of the American Dehydrated Onion and Garlic Association?

A. Yes, it is.

Q. And now, Mr. Clausen, do you have any distributors for the dehydrated onion and garlic produced by Gilroy Foods, Inc.?

A. We have a few.

Q. How many, sir?

A. Approximately six or seven.

Q. Do you have any plans to hire more salesmen?

A. Yes, it is our plan to do that next year some

time.

2152 Q. Are you selling your products nationally, sir?

A. We are.

Q. Mr. Clausen, have you had occasion to test the quality of imported dehydrated onion and garlic from time to time in recent years?

A. Yes, I have kept up with the qualities and the various users.

Q. Has that quality in your opinion improved during that period of time?

A. I would say quite substantially.

Q. Mr. Clausen, what kind of customers are you trying to reach in your sales efforts for Gilroy Foods, Inc., Products?

A. We are looking to the large customer. In other words, that customer which would buy at least a minimum of $5,000 to $10,000 per year.

Q. What would be your estimate of the number of such customers in the United States?

A. I would say it would be approximately 250 or perhaps 300 customers in this area.

Q. And about how many of these companies have you called on in your efforts to sell dehydrated onion and garlic since you have been with Gilroy Foods, Inc.?

A. Approximately 100.

Q. Are any of those companies suppliers of Consolidated Foods Corporation?

2153 A. Yes, they are.

Q. How do you know that?

A. Well, I know the Consolidated method of distribution and I know that many of the products which they handle are national brands of which we are calling on and selling.

Q. In your conversations with these companies that you have testified you have called on, has anyone ever told you

that they have bought or will buy dehydrated onion or garlic from Gentry because it is a part of Consolidated Foods Corporation?

Mr. Hays: Objection; hearsay.

Hearing Examiner Kolb: Overruled.

• • •

A. No.

By Mr. Walker:

Q. Have you had any difficulty beyond that normally experienced by any salesman, Mr. Clausen, in selling dehydrated onion or garlic to these companies that are suppliers of Consolidated Foods Corporation?

2154 A. No.

Q. Now, Mr. Clausen, did you hear any mention of the so-called practice of reciprocity in the office while you were employed by Gentry?

A. Yes.

Q. What knowledge did you acquire about this subject when you were working with Gentry?

A. For several months prior to my leaving Gentry, I was doing quite a bit of research work on the initial phase of the investigation.

Q. And what investigation do you refer to, Mr. Clausen?

A. Well, the investigation of the purchase of Gentry by Consolidated and its effect on customers of Gentry and the industry.

Q. That was the investigation that was initiated by the Federal Trade Commission, is that right?

A. That is right.

Q. You said you did research; what kind of research did you do?

A. There were certain exhibits that were requested, letters. Mainly, it was working the files and getting sales statistics, reading of specific call reports which were involved with the particular case.

• • •

2157 Q. Mr. Clausen, based upon your experience with Gentry as a salesman and based upon your experience in producing and selling dehydrated onion and garlic since you left Gentry, do you know of any instances where any company bought any more dehydrated onion or garlic from Gentry because of Gentry's relationship to Consolidated?

A. No. Now, that is speaking personally about my own contacts, no, I do not.

Q. Mr. Clausen, has the ownership and operation of Gentry by Consolidated Foods Corporation adversely affected the ability of Gilroy Foods, Inc., to produce and market its dehydrated onion and garlic products?

Mr. Hays: Objection, conclusionary.

Hearing Examiner Kolb: The objection will be overruled.

A. No.

* * *

2162 San Francisco, California
October 26, 1960

2163 PROCEEDINGS

* * *

2165 GEORGE E. CLAUSEN was thereupon recalled as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Hays:

2166 Q. When you founded INDESA in Mexico, did you commence the dehydration of garlic?

A. Yes.

Q. Did you have any potential customers before you commenced that dehydration?

A. No.

Q. Was all of the products of INDESA, that is, the dehydrated garlic produced, sold in the United States?

A. Would you repeat that? The reason I am asking you is, did you specify garlic or onion?

Q. I specified dehydrated garlic.

A. Yes, it was.

Q. Was it sold in any particular area of the United States or was it sold generally throughout the United States?

A. It was sold to very few customers, primarily the East Coast.

Q. How many customers was it sold to?

A. There still remains a bit, but the balance was sold to three or four customers.

Q. Did you have one principal customer?

A. Yes.

Q. What was the name of that customer?

A. That customer was the Gel Spice Company in Brooklyn, New York.

Q. And did you have any conversations with this 2167 company or people in this company before you founded and commenced the operation of INDESA in Mexico?

A. No, I had never met them.

Q. Did you personally obtain them as customers?

A. Yes.

Q. Will you describe just what happened in that connection?

A. The quality of the garlic which I produced in Mexico was not up to the standard of our American product which limited me at the beginning to selling to customers who ordinarily might have imported garlic or who had a trade which would accept a quality somewhat less than that produced by the California producers.

After we had finished milling the garlic and it was ready for shipment, it was necessary to find those customers who would buy it. In the calls I made back in the East Coast, I came across these individuals who I heard about but never had called on them personally before.

Q. And what type of business were those customers in?

A. Well, these customers are in—primarily, they are in the distribution rather than in the manufacturing of seasoning which uses onion and garlic. In other words, they buy and resell.

Q. And to what type of concerns do they resell this to?

A. I would say they resell to meat packers, packers in glass jars, but smaller companies in their general area.

2168 Q. Do they sell to the bakery trade?

A. Yes, but not garlic. The bakery trade primarily uses onion.

Q. And in what products did this imported garlic, Mexico ultimately find itself?

A. Well, from my own knowledge, I couldn't answer that, but I assume some was repacked in glass jars, perhaps some meat packers, but specificially, I don't know because I don't follow it after it is sold to the customers.

Q. What kind of customers would be willing to accept a lower quality imported product?

A. Well, price buyers. The fact that the price is cheaper is a consideration. You have in any area customers, those people that price is important, and let's say while the quality was acceptable perhaps it was not as good as our California producers.

Q. And you had no more than four customers?

A. I would qualify that and say four, but again, there are so many things that have been happening in the last few months, I would have to check. I would say four, but perhaps five.

Q. Why did you not stay with INDESA and attempt to

build it up to the point where the dehydrated onion and other dehydrated vegetables—

A. As a matter of fact, I still own a 50 per cent interest in the plant and my reason for looking, you might say, for other connections in this field was primarily a financial problem.

2169 In other words, I underestimated what was required financially to start the plant and continue it in order to produce sufficient quantities to be able to make a profit.

Q. And was your error in judgment one of the reasons why you are attempting to sell it out?

A. Let's say that we are attempting to sell 51 per cent control. I will remain as a stockholder, but as a minority stockholder. I would agree that you could call it an error in judgment in that I underestimated what the capital requirements were of putting up a plant.

Q. Who does the selling for that company at the present time?

A. Well, I have handled the sales, and there has been no production during this current year, so the company is neither producing nor soliciting sales at this time.

Q. Do you have any plans to resume production?

A. I personally don't, but if the program of selling 51 per cent of the company goes through, then there were—there will be plans certainly to not only continue producing onion and garlic, but to expand probably into other lines.

Q. What were the total sales in pounds of dehydrated garlic of INDESA in its last 12 months of operation?

A. Well, let me answer by saying that the total sales for all of the production of INDESA of dehydrated garlic will approximate in the neighborhood of 60,000 pounds.

I say approximately because we did the remilling 2170 here in the United States. There were certain losses in this remilling which are normal, and therefore it was in the neighborhood of 60,000 pounds. The amount

imported originally was about 70,000 pounds.

Q. And for how long was INDESA in operation?

A. Well, actual production of the plant over a period of about 90 days, during the summer of last year.

Q. Where was the garlic remilled in the United States?

A. It was remilled in Douglas, Arizona.

Q. And who did that remilling?

A. A company in Douglas called Dehydro-Foods. That is D-e-h-y-d-r-o - F-o-o-d-s, Dehydro-Foods, Douglas, Arizona.

Q. Why did you not mill it in Mexico?

A. Well, there were probably two reasons. First of all, I was a substantial owner of Dehydro-Foods. The other party and I had planned to dehydrate onion in Arizona; and going back into the previous testimony, I think I pointed out that I was interested not only in a plant in Mexico, but potentially in one in the United States.

Much of the equipment for an onion and garlic plant is common to both, and we decided to leave some of the equipment that had been originally purchased for INDESA in Dehydro-Foods; since the sales would probably take place in the United States from Mexico, we felt that there was an advantage to doing the milling in this plant in Douglas.

2171 Q. Dehydro-Foods is engaged in what type of business?

A. Well, it was established for the dehydration of onion.

Q. And does it to any—

A. It processed a few thousand pounds, and that company is still a legal entity, but no longer doing business, either.

Q. And when was that company in business?

A. Dehydro-Foods processed onion in the summer of 1959.

Q. And it did not process any dehydrated onion in the summer of 1960?

A. No.

Q. Is it a fair statement to make that that company was not successful in the dehydration of onion?

A. Yes. Perhaps I can qualify that by saying that the quality that we put out was acceptable but, again, the financing was inadequate, which was the main reason that it was not continued.

I might also point out, that quite a few of the facilities were leased and not purchased. In other words, there was little capital investment into it due to the fact that we were able to lease our drying equipment and run it more or less as a test, you might say.

Q. Weren't the 15 individuals who originally formed Gilroy Foods, Inc., garlic growers?

A. I would say some of them. Not all of them. There were other just investors.

2172 Q. How many of them were garlic growers?

A. I would say approximately eight, eight or nine.

Q. Did the dehydration of garlic by Gilroy Foods commence for the first time in the fall of 1959?

A. Yes.

Q. And when in that year did such processing commence, what month?

A. Well, I was not with the company at that time. I would guess the month of September.

Q. Has it processed dehydrated garlic in each month since September 1959?

A. No.

Q. What months has it not processed dehydrated garlic?

A. Well, when we say processed, I am referring to the actual drying operation, and usually when your garlic is finished, as far as the crop, in the late year then production is not resumed on the new crop until June, usually, of the following year.

Q. How much dehydrated garlic was produced by Gilroy

Foods, Inc., from the time that it commenced operations in the fall of 1959 until May of 1960?

A. Again without referring to figures I would hazard a guess of approximately 400,000 pounds, perhaps a bit more.

Q. Was all of this dehydrated garlic sold during that period?

A. That is another difficult question, because this
2173 garlic goes into inventory. It is mixed with production, and I can answer it by saying our sales have been that amount or, let's say, that we have disposed of that amount of garlic.

So, assuming that the '59 pack has been disposed of, yes.

Q. Now, did you pack any dehydrated garlic or process any dehydrated garlic from June of 1960 to the present?

A. Yes.

Q. How much?

A. Well, I would prefer not to answer that, my reason being obviously my competitors find this information out, which conceivably could be used to my disadvantage.

Q. Well, all the competitors' records, their sales are in the records, so you can look at theirs, too.

A. Oh, that is right.

Mr. Walker: I don't believe, Your Honor, that there, unless I am badly mistaken, that there is any current sales data from any of these competitors in the record, Basic, Gentry, Puccinelli, or any of them.

It is my best recollection that all of the sales data stops as of 1958 or 1959 at the latest.

Mr. Hays. That is right. You are right, Mr. Walker, on that point.

By Mr. Hays:

Q. Could you give us some approximation of the amount you produced since June of 1959 which would not
2174 prejudice you in the eyes of your, in view of your competitive situation?

A. Well, can I answer it this way, by saying that our total production of 1959 and of 1960 will be in excess of a million pounds of dehydrated garlic which I am sure they have an idea merely by the fields and the growing conditions, the amount of garlic available.

Q. Is a considerable amount of that production still in inventory?

A. Yes, it is.

Q. Was the Mayfair Packing Corporation a satisfactory sales organization for the sale of dehydrated garlic?

A. I would answer that no, just from what I had heard about their activities before I came to the company.

Q. Is it your feeling that Gilroy Foods, in order to become successful, must also produce themselves dehydrated onion?

A. Yes.

Q. Why is that, sir?

A. Well, your market ratio of sales is approximately three to four pounds of onion for every pound of dehydrated garlic. There are many people that buy dehydrated onion that buy dehydrated garlic, and there are practically no people that buy garlic and no onion.

Q. In the light of that circumstance, would it have been better for a new company such as Gilroy Foods to commence the dehydration of onion first?

2175 A. Yes.

Q. Gilroy Foods has commenced dehydrating onion when, sir?

A. Let me answer that by saying that they had a trial run of perhaps a thousand pounds of dehydrated onion in 1959 which was only a trial run. The actual production this year began, let me say, in the late spring, without being more specific, perhaps late April or May of this year.

Q. And has dehydrated garlic—I mean, onion, dehydrated onion, been processed continuously since then?

A. No. With our particular plant we either run all garlic or all onion, and we have been processing onion in between various runs on garlic.

Q. How much dehydrated onion have you processed this year?

A. I would say approximately half a million pounds, dehydrated.

Q. Is a considerable amount of that still in inventory?

A. Not too much.

Q. You have sold almost all you have processed?

A. Of the onion, yes.

Q. At the present time, how many salesmen does Gilroy Foods have?

A. Well, I am the only sales representative or contact with the trade. We have no salesmen and no brokers in the United States.

Q. Do you plan to build up your sales force?

2176 A. Yes.

Q. Why have you not done so already?

A. Well, financial is perhaps one reason. The other reason, I preferred at the outset to handle the sales for Gilroy Foods, to handle the sales myself as a method of introducing the company to the trade.

Q. You will either have to hire salesmen from some of your competitors or train new men, is that right?

A. I prefer to train a new man than to hire a competitive salesman.

Q. What does that involve, sir?

A. In hiring a new man?

Q. Training him.

A. Well, I would feel that the man should come out and spend several weeks at the plant itself, at least a month, learning the process, the product, how the products are made, because I think this is a great asset in being able to sell the product, knowing exactly how and why we do these things.

Then I would personally visit with him the accounts that I have called on to introduce him to potential customers, and in that way he can also get a feeling of my method of selling these products.

Q. What period of time would fully training a salesman involve?

A. Well, I wouldn't think that a new man would
2177 be worth much to the company, certainly, under four months. This is a variable thing which depends on the individual.

Q. In other words, building up a sales force involves considerably more than just hiring men?

A. Yes, sir.

Q. Referring to the initial capital investment of Gilroy Foods, you stated on direct that the original 15 put in $45,000 worth of stock. Do you mean they paid cash for $45,000 worth of stock?

A. That is right.

Q. And you further testified there was a balance in notes for a total of $150,000. Do you mean that stock in the amount of $150,000 was sold to them for which they gave their personal notes, as distinguished from cash?

A. No, the original investment was $45,000 in stock.

Q. That is, they put $45,000 cash, and got $45,000 worth of stock?

A. Right, yes, sir.

Now, the balance for the $150,000 was also paid in by these 15 individuals for which they received ten-year notes from the company bearing interest, an annual interest.

Q. What was the total amount, the amount that they paid in, and this amount that they loaned the company?

A. That was the $150,000.

Q. So they loaned the company $105,000, is that
2178 right?

A. Yes.

Q. So when Gilroy first commenced its operation it had approximately $150,000?

A. Yes.

Q. Now, a new plant was built, is that correct?

A. Yes.

Q. Now, was a mortgage placed on that property?

A. Yes, there was.

Q. What was the total cost of that new plant?

A. Let me ask you this. Are you referring to the original plant as it was built in the spring of last year?

Q. Yes, sir.

A. Because there have been additions to it.

Q. Yes, sir.

A. Approximately $325,000.

Q. And what was the amount of the mortgage on that plant?

A. That was $64,000.

Q. Was there any other financing in connection with that plant?

A. Yes, there was $45,000 borrowed from the bank which was secured by personal notes from these 15 people.

Q. And how much cash was paid toward the cost of the plant?

A. I can't answer that. I don't know. I don't have these figures with me.

Q. How much did you say the plant originally cost?

2179 A. $325,000.

Q. There was a mortgage for $64,000, is that right?

A. That is right.

Q. And how much was borrowed from the bank on personal notes?

A. $45,000.

Q. According to my calculation, that leaves approximately $116,000 that is not covered by the mortgage or the notes. Would that have been, was that paid for out of

this original $150,000?

A. Are you including that 150 in these figures? In other words, when you say there is $116,000—

Q. I mean $216,000, $216,000.

A. Well, let me answer it by this, that all of the 150 original went into plant equipment. Part of the material as it was produced was put into a bank, Lawrence Warehousing type of arrangement, and I know for a fact that part of that money also went into plant equipment, so the balance was probably even made up after the plant had begun production.

This is a rather hazy area because every month there was material, equipment added to the plant, and I can't give you specifics because I wasn't in it at that time.

Q. Now, slightly more than $100,000 was brought in in the spring of 1960?

A. Yes.

Q. And where did that come from?

2180 A. Well, that came from ten new investors.

Did they put up $10,000 apiece?

A. They put up $11,000 apiece.

Q. Why were these new investors taken in?

A. The company was under-financed from the beginning, and we needed the additional $110,000.

Q. Hasn't there been a recent stockholders meeting discussing further financing?

A. Yes, there has.

Q. When did that occur?

A. That occurred I believe one week ago.

Q. Were the shareholders satisfied with the operation of the company?

A. As a result of that meeting I would say that they were satisfied, realizing, of course, that first it is a new company; any new company certainly has problems of organization, of getting itself in a situation where it can

compete effectively. I would say the outcome of the meeting was such that the majority of the stockholders approved the operation of the business to date.

Q. Are you attempting to get further financing?

A. Yes, we are.

Q. Did you have something to add?

A. I believe the stockholders meeting was two weeks ago rather than one.

2181 Q. Did Gilroy Foods, Inc., produce at capacity all during the year 1960 so far?

A. As far as raw material has been available, in talking in terms of capacity, that is right.

Q. There have been times when raw material was not available?

A. No, not to us this year.

Hearing Examiner Kolb: You mean there has been no time when raw material has been available, or it has not been available?

The Witness: It has not been.

By Mr. Hays:

Q. In other words, it has produced at capacity all during this year?

A Yes, sir, and I will qualify that by saying that in the early spring months there is no suitable raw material available, so assuming we are talking about materials specifically for dehydration—

Q Yes, sir, dehydration, dehydration of onion or dehydration of garlic.

A. That is right.

Q. You testified that you had some distributors of dehydrated onion and dehydrated garlic?

A. Yes, sir.

Q. What type of distributors are they?

2182 A: They are people who, in the industry, purchase and primarily resell to their own customers usually

medium-size and smaller customers.

Q. And what type of customers do they have?

A. Oh, they have the same type of customers that you will find the California producers also selling to. In other words, meat packers, small canneries, medium-size canneries, same general line of trade.

Q. Now, you testified that you were selling your products nationally?

A. Yes, sir.

Q. Did you mean by that that in 1960 you sold your products to customers in each of the United States?

A. No, I say nationally here, I am talking about the major trading areas which we consider the general greater Chicago area, Eastern Seaboard, and the West Coast.

Q. In other words, the customers to whom you sold dehydrated onion or garlic in 1960 were located either on the East Coast or in the Chicago area, or west of the Rocky Mountains?

A. Generalizing, that is a fair statement, that is right, except for perhaps a few specific small shipments to out-of-the-way points, but . . .

Q. You testified that you were looking to the large customer, and by that you mean customers purchasing a minimum of 5,000 to 10,000 dollars a year, is that correct?

2183 A. That is right.

Q. Who isn't looking to sell to the large customer in this industry?

A. I didn't hear.

Q. Who is not looking to sell to such customers in this industry?

A. I would say they all are.

Q. And you estimate there are approximately 250 to 300 such customers in the United States?

A. Yes, sir.

Q. And in 1960 you contacted approximately 100 of these?

A. Approximately.

Q. And from approximately how many did you obtain orders?

A. Let's say generally 20, 25, considering the fact that some of my customers might not be in this class, also.

Q. How many customers do you now have?

A. Approximately 25.

Q. And how many of these are in this class?

A. Perhaps 20, or certainly the majority are.

Q. Did you enter into requirement contracts with your customers?

A. No, I have not other than specific orders, I have not entered into any contracts with any customers.

Q. These sales were spot sales?

A. Yes, insomuch as many of our major customers
2184 that buy for 30 or 60-day future delivery, according to their own requirements, they give that much lead time.

Q. You haven't shipped all you have sold?

A. Pardon me?

Q. You have not shipped all you have sold?

A. Yes, this week we will have shipped everything that has been sold.

Q. Then you will have to go out and try and sell some more?

A. There is a certain amount of business that is repeating itself now, but, yes, I should be out calling on the customers as often as possible.

Q. Which of your customers are suppliers of Consolidated Foods?

A. In the terms that many customers of mine also sell Consolidated, either in retail packs, canned goods or spices, I would say that several people that I am now selling also sell to Consolidated.

Q. Which people are they, sir?

A. R. T. French Company, and — again, let me say that I am not exactly sure of who sells who in this case, as far as my customers selling Consolidated. I am assuming that they do because Consolidated has national distribution, and the customers that I am selling to are large buyers. Going ahead with that I could say Durkee, Wyler and Company, McCormick, to name a few.

2185 Q. Those are a few of your customers that sell to Consolidated?

A. As far as I know.

2186 Q. Which others can you name?

A. Without referring to any volume, because again many large customers have given us small orders, you might say, on a trial basis, on this basis you could include Hunt Foods.

Q. They gave you small orders?

A. Small orders.

Q. Did French give you small orders?

A. Rather substantial.

Q. Did Durkee give you a small order?

A. Rather substantial.

Q. Did Wyler give you a small order?

A. Again, substantial.

Q. Did McCormick give you a small order?

A. Again, rather substantial.

Q. Now, which others gave you substantial orders and which others gave you small orders?

A. That are suppliers to Consolidated as far as I know?

Q. Yes, sir.

A. Oscar Mayer.

Q. What type of order?

A. Meat packers.

Q. What type of order did he give you?

A. A small order. Offhand, I couldn't think of any more that would fit into this particular area, sir.

Q. Have you sold any to California Packing Corporation?

2187 A. No.

Q. Have you attempted to sell that company?

A. Yes, I have.

Q. When you were with Gentry, did you call on that company as a Gentry salesman?

A. Yes.

Q. Did you sell to the R. T. French Company both onion and garlic?

A. Yes.

Q. Did you sell to the Durkee Company both onion and garlic?

A. Yes, sir.

Q. And did you sell to Wyler both onion and garlic?

A. Yes, sir.

Q. And did you sell to McCormick & Company both onion and garlic?

A. Yes, sir.

Q. Have you called on some suppliers of Consolidated that you were unable to sell dehydrated onion and garlic to?

A. Yes.

Q. Which were those firms?

A. Well. I have called an firms such as California Packing Corporation, Stokely, Libby's, many national companies, all of which I am sure supply Consolidated.

Q. You have been unable to sell them anything?

A. Yes, but perhaps I should point this out: That

2188 in a new company getting established in this industry, there are certain loyalties, let's say, between purchasing agents and suppliers over many years.

It is difficult for somebody new to come into this industry particularly in this first year unless they are enabled to get business from these national companies.

In fact, the ones that I had mentioned that I haven't

sold had expressed an interest that we are coming into the industry and have certainly said there is a probability of future business.

I think their hesitancy right now and probably justified is the fact that we are a new company. We are not proved in the eyes of most processors and until we get ourselves to the point where we have been in business a couple of years, I think there will be hesitancy on many parts.

Q. When you were with Consolidated Foods, did you sell to French and Company?

A. No, I sold just in the 11 Western States area.

Q. Is Consolidated Foods regarded by you as a tough competitor?

A. In all honesty, I would say no tougher than Basic.

Q. They are a tough competitor, are they?

A. Yes.

Q. And Basic is a tough competitor?

A. Yes, sir.

Q. Do you regard Puccinelli as a tough competitor?

2189 A. I don't, no.

Q. Does Basic have a better quality than Consolidated Foods?

A. On the average, yes.

Q. Does Basic have a lower price than Consolidated Foods?

A. Selling price are you referring to?

Q. Yes.

A. As far as I know, no.

Mr. Walker: I think again that it might be helpful if the record would show to avoid any possible misunderstanding that when the term "Consolidated Foods Corporation" is used here, you are talking about the Gentry Division, is that right?

Mr. Hays: That is correct.

By Mr. Hays:

Q. Does Basic offer better service than Consolidated Foods?

A. Well, you are asking me questions which I can't answer from personal experience.

Better than is a relative thing. I would say certainly, they offer excellent service.

Q. How do you consider Basic to be a tougher competitor than Consolidated Foods?

A. I have found this, in calls that I have made on purchasing agents that buy from both companies, I would say that in some cases, there might be even a stronger loyalty to Basic. These loyalties sometimes are built up over
2190 a number of years. They certainly are not created in a short time.

Certainly, I can't create these loyalties in a year or two. These loyalties are built from good service, consistent quality, you might say proper pricing. All these things have a bearing on whether or not a buyer will continue to buy from you.

Q. Those are the areas in which you consider Basic to be a tougher competitor than Consolidated Foods?

A. Again, let me qualify that by saying they are both tough competitors.

Q. Yes.

A. I have certainly problems in entering this industry with both. I feel we will be a rather substantial supplier to this industry eventually. It will take time, but I think that Basic, as I said, has some stronger loyalties with a few customers.

Now, this is a generalizing statement.

Q. Is that why you consider Basic to be a tougher competitor than Consolidated Foods?

A. Yes, I would say that.

Q. These, sir, are personal loyalties to individuals, is

that correct?

A. Yes, I think you will find that some of the Basic personnel have been calling on customers longer than Gentry personnel, again, being very general which forms loyalties.

May I insert something here in following this testimony?

2191 First, I am selling to customers that buy from both Gentry and Basic; so it is not a question of my going out and trying to displace one or the other. In other words, I am after business where I can get it and you will find that most of your larger customers who are the ones that I am calling on generally will split their business between the two, mainly for safety sake, to have a second supplier into the field.

Q. Well, you are going to have to displace somebody, if you sell so many things, aren't you?

A. Yes, that is right. But again, in the way that I have attempted the sales, I am not going after a hundred per cent of anybody's business. I don't think we are in a position where we should attempt that, being a small company.

What I am attempting to do is be a partial supplier to many of your big companies. Call it a 5 per cent supplier or 25 per cent supplier or hardly a hundred per cent supplier to any of these areas.

Q. In other words, you are trying to be a third supplier?

A. That's right. I would say that I have had more success in that particular avenue than I have had in displacing either one because it is very difficult.

Q. Why do you not consider Puccinelli a tough competitor?

A. I don't think that Puccinelli has stressed quality as much as the other suppliers. You will find with these major accounts that Puccinelli has not actively or at least,

2192 let's say, successfully sold the top accounts in the United States, and I consider the quality that we have

acceptable to these top accounts; therefore, I do not consider him as a tough competitor.

Q. Does Puccinelli also sell fresh onion and garlic?

A. I really don't know.

Q. How many salesmen do you expect to train next year?

A. Let's say that I hope to add one next year.

Q. Did you testify that since commencing the production of dehydrated onion your company has produced approximately one million pounds of dehydrated onion?

A. I believe I said 500,000 pounds.

Q. 500,000 pounds?

A. That's right.

Q. Of dehydrated onion?

A. Yes, sir.

Q. That is the correct figure, 500,000 pounds?

A. Approximately, yes, sir.

Q. And how many pounds of dehydrated garlic?

Mr. Walker: What period are we talking about now, please?

Mr. Hays: This year.

The Witness: I said, without getting specific, our production of dehydrated garlic for 1959 plus 1960 would be in excess of a million pounds.

By Mr. Hays:

2193 Q. And a substantial amount of that is still in inventory?

A. Yes, it is.

Q. And there is no inventory now of dehydrated onion?

A. There is some but relatively speaking, it is much less in proportion. Again, these inventories are built up at the end of the season to last you until new crop production, so this is a normal thing in the industry.

Q. And how long does your inventory have to last you?

A. This will have to last us, roughly, until May of 1961.

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By Mr. Walker:

Q. Mr. Clausen, in your cross-examination by Mr. Hays you said something, I believe, about your difficulties in obtaining financing in your Mexican operation, INDESA, and also in the Arizona operation.

Would you please state, Mr. Clausen, approximately how much was invested in each of those two operations?

A. In Mexico, the actual dollar investment was approximately $125,000. In Arizona, it was only $30,000 but again it was because we were able to lease some basic equipment here that had to do with processing.

Q. Mr. Clausen, you testified also about your problems in connection with coming into this industry, and I believe at one point you made the statement that it was difficult to come into this industry.

When you said that, you were referring to the prob-
2195 lems of going into production, obtaining raw material or the problems of selling the finished product?

A. The problems of selling the finished product primarily.

Q. And those are the problems that you discussed at length with Mr. Hays in the course of your cross-examination?

A. That is right.

Q. Mr. Clausen, you testified at one point that in your opinion, I believe, Basic was tougher competition, and later on in answer to another question by Mr. Hays when he asked you why after some interval of time in several questions between the two, you referred to the personal loyalties of certain customers to Basic.

Is that the only reason why, in your opinion, Basic is tougher competition?

A. Well, again, when I say "tougher," we are talking

about a thing that is hard to define, how much tougher is this point.

Again, they are both tough competition.

Q. Excuse me, but what I want to know, Mr. Clausen, is when you said it is tougher competition, do you confine that to the personal loyalties of Basic's customers to Basic or does it include also other factors?

A. No, I would say it included other factors. It would include the factor of, yes, your loyalty, No. 2, your quality and consistent quality, again, particularly back over previous years this has been more of a factor in creating
2196 loyalties to Basic, not so much as it was prior, but that is still a factor into it.

Certain to some extent has been a factor, so again there are several reasons.

Mr. Walker: No further questions, Your Honor—Oh, I am sorry, one more.

By Mr. Walker:

Q. Mr. Clausen, are you planning or considering taking on any brokers for your products as well as salesmen?

A. I have no plans right now for any brokers.

Mr. Walker: No further questions.

Recross Examination

By Mr. Hays:

Q. Why do you plan not to use any brokers?

A. To me, this is a specialty product which is better brought to the customer through a direct man who has had information as to the product, in other words, a full-time man, a hundred per cent selling my product rather than selling my product with somebody else's line.

I do not feel it is effective, particularly on introducing a new company because this is more difficult than calling for an established company.

Q. During the period from 1951 until the time you left

Consolidated Foods, did you find that the quality of Basic was better than the quality of Consolidated Foods'
2197 dehydrated onion and garlic?

A. I would say there were times, yes, when it was.

Q. Where you mentioned quality and continued quality as one of the areas in which Basic offered tougher competition than Consolidated Foods, do you mean that to apply to the present time?

A. I would say it is not as pronounced today as it has been over the past few years, but I will say it still exists today, particularly in reference to garlic or some particular grind of garlic.

Q. Was it more pronounced in 1951 than it is today?

A. Yes.

Q. And during the period from 1951 to 1956, was it more pronounced than it is today?

A. Yes. I would say that there has been—as a matter of fact, there has been a completely—an upgrading of quality on the part of all our suppliers, and it is necessary from our standpoint to produce a quality equal to our competitors if we want to make a real success of this.

Q. I am speaking about the quality and continued quality of dehydrated onion and garlic of Basic as compared to that of Gentry Division of Consolidated Foods.

Now, during the period 1951 to 1957, has the quality in continued quality of Basic dehydrated onion and dehydrated garlic been better than the quality of the same
2198 products of the Gentry Division of Consolidated Foods?

A. That is a difficult question to say yes or no to. I would say generally, yes. In other words, some specific types of onion have been better and more consistent during that period, but to say every product is better I can't honestly say that.

On the overall, I say that it has been better, and I think it was considered better by customers during that period.

Q. Now, at the present time, is there any quality or quality differential between Basic dehydrated onion and garlic and Gentry Division of Consolidated Foods dehydrated onion and garlic?

A. Yes, I think there is still a variance there in favor of Basic, again, on specific products, not a general basis but perhaps the lead is not as it has been in the past. I would say there is a difference.

Q. In other words, the gap has been closed in recent years?

A. Yes, I would say to some extent it has been closed.

Q. That is, closed by the Gentry Division of Consolidated Foods by bringing their quality up towards that of Basic.

A. Yes.

* * *

2199 ANTHONY B. WILLMAS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Anthony B. Willmas, W-i-l-l-m-a-s.

Q. Where do you live, Mr. Willmas?

A. 1900 Vista, Sierra Madre, California.

Q. What is your occupation, sir?

A. Vice-President of manufacturing, Lawry's Foods, Inc.

Q. Where is that company located?

A. 568 San Fernando Road, Los Angeles.

Q. Would you please describe the products sold by Lawry's Foods, Inc.?

A. Well, we are a specialty food manufacturer and we make a seasoned sauce, spaghetti sauce mix, a line of

liquid and dehydrated dressings, garlic spread and dehydrated dip mix.

Q. To whom do you sell those products, sir?

A. To wholesale grocers and retail grocery chains.

Q. Do you also sell to institutions?

A. Yes, we do.

2200 Q. And those are institutional pack items?

A. Institutional pack.

Q. Through what channels do you market your products, sir?

A. Through brokers and we do have some salesmen that work with the brokers.

Q. Under whose label do you sell your products?

A. Under Lawry's label.

Q. During what period of time, Mr. Willmas, has Lawry sold its products to any unit of Consolidated Foods Corporation?

A. Oh, I would say as far back as 1946.

Q. Were these your retail pack or institutional pack items?

A. Retail.

Q. Mr. Willmas, have you ascertained for us the approximate volume of your sales to Consolidated in the years 1957 and 1958?

A. Yes, I did get them or they were given to me by our accounting department.

Q. Would you please state those figures?

A. In 1957 it was $20,000 and in 1958 approximately $12,000.

Q. What is the approximate percentage of those sales to your total sales in those years?

A. Oh, I would say less than one-half per cent.

Q. Less than one—

A. Less than one-half of one per cent.

Q. Less than one-half of one per cent?

A. Right.

2201 Q. What has been the trend of your total sales since 1950 in your company, sir?

A. It has been going up.

Q. And what, in your opinion, have been the reasons for that trend?

A. Well, good sales effort, quality merchandise and consumer acceptance.

Q. In which of your products, Mr. Willmas, do you use dehydrated onion, dehydrated garlic and capsicums?

A. Dehydrated garlic and onion in most of our products and capsicums in a few of our seasoning mixes and salt, seasoned salts.

Q. Will you please describe in a little more detail, Mr. Willmas, your duties as Vice-President of manufacturing?

A. I am in charge of manufacturing, warehousing, shipping, receiving, maintenance, quality control and purchasing of all raw materials and manufacturing equipment.

Q. Who has made the decisions as to your sources of supply for dehydrated onion, dehydrated garlic and capsicums since 1950?

A. I have.

Q. From what companies have you purchased your dehydrated onion and dehydrated garlic?

A. Since 1950?

Q. Yes.

2202 A. Basic and Gentry.

* * *

2203 (The document referred to, heretofore, marked for identification Respondent's Exhibit 180, was received in evidence.)

By Mr. Walker:

Q. Mr. Willmas, with what company did you purchase your dehydrated onion and garlic in the years 1946 through 1956?

A. Basic.

Q. Why did you buy exclusively from Basic during this period?

A. Well, I have been buying from Basic right from the start and because of their quality and service.

Q. Well, why then, Mr. Willmas, did you purchase about 16,000 pounds of dehydrated onion from Gentry in 1958?

A. Well, in 1958 we established and put out a new
2204 product requiring substantial amounts of onion and at this time I thought it was good business to engage a second supplier which was Gentry.

Q. Had you tested Gentry's dehydrated onion in any years prior to 1958, sir?

A. Yes, I did.

Q. Why did you not buy from Gentry during those years?

A. Two reasons, first of all, I was satisfied with the quality of Basic; secondly, Gentry's, at that time, quality didn't come up to our specifications.

Q. How much of your capsicum requirements have you purchased from Gentry, Mr. Willmas?

A. Not—in round figures, not very much.

Q. Well, would it be—

A. I think I have some figures here. According to these records, in 1954, 110 pounds and in 1955, 7,700 pounds. That is all the records I have.

Q. And that data, Mr. Willmas, was I believe supplied by us to you, is that right?

A. I believe so.

Q. Mr. Willmas, what was the total volume of your capsicum purchases during 1958?

A. 129,000, close to 130,000.

Q. 130,000 pounds?

A. Pounds.

2205 Q. From what company have you purchased most

of your capsicum requirements?

A. From Chili Products and Cal-Compack.

Q. Mr. Willmas, we have informed the Hearing Examiner that we have discussed this case with the witnesses prior to their testimony.

Before you were contacted in connection with your appearance as a witness, have you ever talked with anyone about a relationship of any kind between your sales to Consolidated and your purchases of dehydrated onion, dehydrated garlic, or capsicum?

A. Yes, I did, casually.

Q. And to whom, with whom did you have this discussion, sir?

A. I believe it was with members of the Basic organization.

Q. Have you had any other communications of any kind on this subject?

A. No, I haven't.

Q. Mr. Willmas, what effect has the fact that Consolidated is a customer of Lawry's had on the volume of your purchases of dehydrated onion, dehydrated garlic and capsicums from Gentry since 1950?

A. None.

Mr. Walker: No further questions.

2206 *Cross Examination*

By Mr. Hays:

Q. What type of products do you make, Mr. Willmas?

A. Food seasonings. Do you want them listed?

Q. Yes.

A. Seasoned salt, spaghetti sauce mix, dehydrated salad dressing, and a line of liquid dressings, garlic spread and dehydrated dip mixes.

Q. Where are these products sold?

A. All over. We are a national organization.

Q. Are they sold in competition with products produced by Consolidated Foods?

A. Well, I can't answer that.

Q. You don't know.

A. I don't know.

* * *

2236 RALPH J. A. STERN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Ralph J. A. Stern.

Q. Where do you live, Mr. Stern?

A. San Francisco.

Q. And what is your home address, sir?

A. 1969 Clay.

Q. What is your occupation, sir?

A. Importer and manufacturer.

Q. And what company are you with, Mr. Stern?

A. McClintock-Stern Company, Inc.

Q. And what is your position with that company?

A. President.

Q. Where is the general office of your company located, Mr. Stern?

2237 A. 305 Clay Street, San Francisco.

Q. Where are the plants located?

A. 305 Clay, San Francisco, and 161 North Mission Road, Los Angeles.

Q. What products are packed at the plants, Mr. Stern?

A. General and spices.

Q. Are there any products packed at your Los Angeles plant that you do not pack at San Francisco?

A. Yes.

Q. What are those products, sir?

A. Chile powder and paprika.

Q. Do you sell your spices in both bulk and less than bulk sizes?

A. Yes.

Q. And do— to whom do you sell the bulk spices?

A. Mostly to food manufacturers, and also competitors.

Q. To whom do you sell your less than bulk-size spices?

A. Institutional users and retailers, mostly institutional users, and to people who we pack under their own label, who have their own private brands.

Q. Do you also sell some to wholesale grocers?

A. That is right.

Q. Are most of your sales in the bulk or less than bulk sizes?

A. I believe in bulk.

2238 Q. Now, under what label, Mr. Stern, do you sell your less than bulk-size products?

A. Customers labels, and some of our own.

Q. What is your own label, sir?

A. Claremont.

Q. And under what labels do you usually sell your bulk packed products?

A. Under our own label.

Q. Through what channels do you market your products, Mr. Stern?

A. I didn't get that question.

Q. Through what channels do you market your products, Mr. Stern?

A. (No response.)

Q. How do you sell your products?

A. Oh, through vendors, and also through brokers.

Q. During what period of time, Mr. Stern, has McClintock-Stern sold any of its products to Consolidated Foods Corporation?

A. Well, I believe since the day we organized our business, or very similar to that, very close to that time, the year we organized.

Q. To what units of Consolidated have you sold your products?

A. Gentry and Monarch Foods.

2239 Q. That is Monarch Finer Foods in San Francisco?

A. Yes, and Los Angeles.

Q. And Los Angeles?

A. Yes.

Q. And when you say you have sold units of Consolidated since your company was organized, you mean the units of Consolidated before they became a part of Consolidated, is that right?

A. That is right.

Q. And, of course, you continued to sell some of these, that is, Gentry and Monarch, before they became a part of Consolidated?

A. Well, we never sold Monarch before.

Q. I see. What products did you sell to these Consolidated units during the period that they bought from you?

A. Bulk spices through Gentry and private labels through Monarch.

Q. And the private label spices to Monarch would be consumer size spices, is that right?

A. Industrial size packages, both consumer and industrial use.

2240 Q. And would you name some of the bulk spices that you have sold to Gentry?

A. Pepper, both black and white, cinnamon, Cayenne, cumino, a similar line of spices. Shall I go on?

Q. I think that is enough, sir.

Now, just so it will be perfectly clear on this record, Mr. Stern, when did you commence selling these spices to Gentry?

A. Well, I am assuming the year we entered into business or within a year or two of that time.

Q. What was the approximate volume of your total sales to any unit of Consolidated Foods Corporation in 1958, sir?

A. I believe around $7,500 to $8,000.

Q. And were most of those sales to Gentry or to Monarch?

A. Gentry.

Q. Was the amount of your sales to Consolidated prior to 1958 greater or less than this figure that you have just given?

A. Less.

Q. About what percentage did your sales to Consolidated bear to your total sales in the year 1958?

A. Under one per cent.

Q. And in the years, let's say, since 1950, what has been the trend of your total sales?

A. Upward.

Q. Now, Mr. Stern, in which of your mixed spices do you use dehydrated onion and garlic?

2241 A. Chili powder, poultry seasoning, crouton seasoning, soup mixes, sausage seasoning or meat packing seasoning, mincemeat.

Q. Do you also sell dehydrated onion and garlic as a separate product?

A. Yes.

Q. Do you sell dehydrated onion and garlic under your own label or the label of the producer such as Gentry?

A. Mostly under our label or private labels which we repack for.

Q. But you do not sell any dehydrated onion or garlic under Gentry's label?

A. Very rare if at all.

Q. What types of customers are those to which you sell dehydrated onion and garlic under their label?

A. What we would call institutional suppliers.

Q. Do you sell dehydrated onion and garlic under — strike that question, please.

Is this dehydrated onion and garlic that you sell as a separate product sold in both bulk and less than bulk packs?

A. Yes.

Q. Now, Mr. Stern, who has made the decision as to your sources of supply for dehydrated onion and garlic and capsicums since 1950?

A. I do.

2242 Q. Is the buying of dehydrated onion and garlic used by the Los Angeles plant done at Los Angeles or in San Francisco?

A. It is actually done in Los Angeles but under the direction of a ceiling or limitation as to customer and as to amount from San Francisco.

Q. So as to the Los Angeles purchases you also control the sources of supply?

A. That is right.

Q. For dehydrated onion and garlic?

A. That is right.

Q. From what companies have you purchased dehydrated onion and garlic since 1950?

A. Basic, Gentry, Simplot, Puccinelli and Standardized Products, I think the name is, in Santa Ana, and a miscellaneous group of foreign suppliers.

Q. Have you also purchased any from Gilroy Foods, Inc.?

A. Yes, but that is only lately.

Q. During what years have you bought dehydrated onion and garlic from Gilroy Foods, Inc.?

A. I assume '59 and '60.

Q. Have you bought regularly from Puccinelli and Simplot since 1950?

A. No, casual purchases.

Q. When did you buy from Standardized Products?

A. Can I answer that by assuming when we
2243 bought? I really don't know the year.

Q. Well, what is your recollection?

A. When we went into business about three years ago.

Q. What amounts have you bought from Standardized Products, that is, dehydrated onion and garlic?

A. Poundage or—

Q. Poundage.

A. I would say under a ton.

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2245 (The document referred to, heretofore marked for identification Respondent's Exhibit 181, was received in evidence.)

By Mr. Walker:

Q. Now, Mr. Stern, this exhibit shows that you have purchased dehydrated onion and garlic regularly from Gentry over the years.

Why have you purchased dehydrated onion and garlic from Gentry during this period?

A. You mean why we purchased particularly from Gentry or why we purchased onion and garlic?

Q. Why you purchased from Gentry. Why you chose Gentry.

A. We have had a long commercial association going back almost to the time that both firms were founded in a somewhat similar period, I think in 1923 or around there, and we have had friendly relations, business relations and also personal relations with the old firm of George Clausen ever since we started in business.

Q. The George Clausen you mentioned, is that the George Clausen, Sr., the former president of Gentry?

A. That is right.

Q. Did you have any business relationships with Gentry, Inc., before it was acquired by Consolidated in relation to

the distribution, or sale of Gentry's products in the San Francisco area?

2246 A. Yes.

Q. What was that relationship, sir?

A. On a personal basis that George Clausen did not cover San Francisco thoroughly in his chili powder and kindred products and we have sometime represented him on an informal basis but never a written contract involved. We handled his sales in the Bay Area.

Q. Have you, over the years, Mr. Stern, been satisfied with Gentry's price, service and quality?

A. Yes.

Q. Now, Mr. Stern, this exhibit which you have in your hand shows that you purchased only very small amounts of dehydrated onion and garlic in the years 1946 to 1948. Is that because you were not selling much dehydrated onion and garlic during those years or did you buy more from another producer than Gentry?

A. I would say that because of lack of sales of the particular product.

Q. You just did not have very large requirements for dehydrated onion and garlic during those years?

A. That is right.

Q. Do you recall when you first bought dehydrated onion or garlic from Basic?

A. According to this record, it would be in 1952-53.

Q. Well, we have no data prior to 1953, Mr. Stern,
2247 and I wondered what your best recollection is as to whether—

A. I would say 1950.

Q. 1950?

A. Yes.

Q. Why did you start purchasing dehydrated onion or garlic from Basic at that time instead of giving all the business to Gentry?

A. Well, following a policy of not having any one supplier for any of our products, when Basic started in business, we had the opportunity of distributing some of our business in two sources for our own safety.

There might have been price considerations there too, which I couldn't swear to at the moment.

Q. Now, Mr. Stern, this exhibit shows that you purchased more of your requirements of dehydrated onion and garlic from Basic in the years 1953 to 1956 than you did from Gentry.

Why was that, sir?

A. I think because of the cooperation that Basic was giving us in the end user's purchases because their customers who used their products, I think their cooperation with us allowed us to sell their products with a great deal more freedom than we could sell Gentry's.

Q. Well, do I gather from that, Mr. Stern, that you took over or that Basic turned over customers to you?

A. That is correct.

2248. Q. So that you could sell them your products?

A. That is correct.

Q. And so you bought the dehydrated onion and garlic from Basic that you, in turn, used and sold to these people, is that right?

A. That is right.

Q. Now, this exhibit shows, Mr. Stern, that you purchased more of your requirements of dehydrated onion and garlic from Gentry than you did from Basic in the years 1957 and 1958.

Why was that?

A. I think the same reason, the Gentry, Gentry's cooperation to our salesmen in the field.

Q. That is in turning customers over to you?

A. That is right.

Q. In the years 1950 to 1958, did you regularly purchase

from Gentry any part of your capsicum requirement?

A. No.

Q. Now, I believe you mentioned, Mr. Stern, that you pack and sell some capsicum such as chili powder and paprika, is that right?

A. We don't call it capsicum, but I will accept the—

Q. You do pack and sell chili powder and paprika?

A. That is right.

Q. In this respect, do you consider Gentry to be a competitor?

A. Yes.

2249 Q. Do you dehydrate any, what I call, capsicum, sir?

A. Directly, no.

Q. Well, where do you get your dehydrated products that you use, such as, chili powder, paprika or any other like products?

A. We contract with farmers both in California, Arizona and Mexico.

Q. And do you— I am sorry, strike that please.

Are these products already dehydrated when you obtain them?

A. Yes.

Q. How are they dehydrated?

A. They are dehydrated at the field dehydrators, in the particular locality in which they are grown.

2250 Q. Would you explain in a little more detail, please, Mr. Stern, what these field dehydrators are that you have just mentioned?

A. Well, in the chile growing districts, sometimes the dehydrators are owned by individual growers, and most frequently they are cooperative, the type of dehydrator owned by a number of growers, either owned or leased, and the chiles grown by these farmers in these particular districts are dehydrated at these particular dehydrators.

Q. Of course, that doesn't apply to onion and garlic?

A. No.

Q. Mr. Stern, we have informed the Hearing Examiner that we have talked with the witnesses about this case before their appearance here in Court.

Before you were contacted in connection with your appearance as a witness here, had you ever talked to anyone about a relationship of any kind between your sales to Consolidated other than Gentry, and your purchases of dehydrated onion and garlic or capsicum?

A. No.

Q. Have you had any kind of a communication on that subject?

A. None.

Q. What effect has the fact that Consolidated, other than Gentry, is a customer of McClintock-Stern had on the volume of your purchases of dehydrated onion
2251 and dehydrated garlic from Gentry since 1950?

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A. I don't believe any.

• • •

2254 San Francisco, California
October 27, 1960

2255 PROCEEDINGS

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LEON C. JONES was thereupon recalled as a witness on behalf of the Respondent and, having been previously duly sworn, was examined and testified further as follows:

Mr. Walker: Off the record.

(Discussion off the record.)

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Leon C. Jones.

Q. Where do you live, Mr. Jones?

A. Caldwell, Idaho.

Q. What is your occupation, sir?

A. I am the vice-president of J. R. Simplot Company and general manager of the food processing division.

Q. That is the J. R. Simplot Company?

A. Right.

2256 Q. How long have you held that position?

A. About 15 years.

Q. Will you please describe the business of the J. R. Simplot Company?

A. Well, we are in the farming business, and the freezing and dehydrating of potatoes, and the canning and freezing of sweet corn at the present time.

Q. Will you please describe in a little more detail the farming business that you carry on in this division?

A. Well, we are very large operators of farming up there, and the diversification of it, and grow green crops of the area, livestock.

Q. Would those crops include onions and potatoes?

A. Yes, they would.

Q. Are the onions that you grow there as a part of this operation suitable for dehydration, Mr. Jones?

A. Some of them are.

Q. Has the Simplot Company done any experimental work with raw onions?

A. We have had quite an active program with the local seed breeder and the University.

Q. What was the purpose of that program, sir?

A. To develop onions with higher yield and higher solid content.

Q. Are onions with higher yield and higher solid
2257 content better suited for dehydration than other types of onions?

A. Yes, they are.

Q. Would you please describe the other business activities carried on by J. R. Simplot Company outside the food processing division?

A. Well, we have a mining division. We have a very large fertilizer division, a lumber division, and a micacell division.

Q. What was the last thing mentioned?

A. Micacell, M-i-c-a-c-e-l-l. It is sand and ceramic clay.

Q. What is the approximate amount of the net assets of the J. R. Simplot Company at the present time?

A. In excess of $20 million.

Q. What are the approximate annual sales of the J. R. Simplot Company at the present time?

A. I would say exceeding $50 million annually.

Q. What are the approximate annual sales of the food processing division of the J. R. Simplot Company?

A. In excess of $20 million.

Q. Mr. Jones, during what period of time did the J. R. Simplot Company process dehydrated onion?

A. From the beginning of 1940 to 1955 or '6.

Q. Where was that processing done, sir?

A. Caldwell, Idaho.

Q. Through what channels did your company
2258 market its dehydrated onion products?

A. Normal business channels, brokers, salesmen, and through distributors.

Q. To what types of customers did you sell dehydrated onion?

A. Well, we sell primarily to the Army and to food processors, particularly in the meat industry, and institu-

tional users, repackers.

Q. Where did you obtain your onions for dehydration, sir?

A. From the local area there in western Idaho and eastern Oregon.

Q. Is there a large supply of raw onions suitable for dehydration still available in the Idaho area?

A. Yes, there could be.

Q. Why did the J. R. Simplot Company not dehydrate onions after 1955 or 1956?

A. Well, there is a whole series of things I might say.

Q. Go right ahead, Mr. Jones.

A. Well, as our potato processing industry picked up in volume, we were a small outfit, and we just naturally drifted away from the onions which were, as I say, more or less a continuing operation.

In other words, as the potatoes got more important, the onions got less important, let's put it that way, and our canning industry moved in and took over our fresh onion warehouse.

2259 This was rather early in the game. In the last few years we processed, we had no local storage for fresh onions. We just got more interested in potatoes, and especially as our french-fried business grew, we were devoting our entire energies to that; and due to the expansion in this our production season was from about the first early potatoes harvested in the area until, oh, it usually ran until the first of the following June, which means that onions which come in up there about in October, late September or October, would overlap.

This meant that right in the middle of our potato processing season we would have to go into onions and operate, which greatly confused things.

I think another thing that was a factor in it was that we had to do all of this in the same plant, at the same plant

site. There is a mingling of odors that are not compatible with potatoes that comes from these onions, and I believe the last year we ran we were running instant potatoes for General Foods Corporation on a contract basis, and we had some rather serious complaints of onion flavor in these potatoes, and we finally told them that as long as this contract continued we wouldn't process onions any longer.

It was just a transition. The sales of our processed potatoes has had a rather fantastic growth, and we have just been short of personnel and plant and funds to do anything about onions.

2260 Q. Now, Mr. Jones, what effect did the fact that Gentry was owned and operated by Consolidated Foods Corporation have on the decision of the J. R. Simplot Company to stop producing and selling dehydrated onions?

A. It didn't have any bearing on the fact at all.

Q. Has the J. R. Simplot Company maintained its membership in the American Dehydrated Onion and Garlic Association since it stopped the production and sale of dehydrated onion?

A. Yes, we have.

Q. And why has your company maintained this membership?

A. Well, because I wanted to stay close to the industry, as close as I could, keep abreast of what was going on, because we have had a continuing interest in it, and each year very seriously considered trying to get back into the business.

Q. Do you regularly attend the ADOGA meetings, Mr. Jones?

A. Yes, I do.

Q. Why has the J. R. Simplot Company intended or planned, or whatever word you used, Mr. Jones, to go back into the production and sale of dehydrated onion?

A. Well, you might say our first love. This is how we

got started. We feel that it is something that is proper for the area. It is one of the largest onion producing areas in the United States in there for fresh onions, and we feel that it is a real good companion item going along with our dehydrated potato products, because quite generally
2261 they go to the consuming areas. They can be shipped in the same cars with the potatoes, and it gives you just one more spoke in the wheel, so to speak.

Q. Is it your opinion, Mr. Jones, that the dehydrated onion market is an expanding market?

A. Oh, definitely.

Q. Have you discussed the possibility of going back into the production and sale of dehydrated onion with other officials of the J. R. Simplot Company?

A. Regularly.

Q. How recently have such discussions taken place?

A. Well, I think the last one was less than a month ago.

Q. What is the present status, Mr. Jones, of your company's consideration of going back into the production and sale of dehydrated onion?

A. I would say it is closer, for the reason that we are just now completing a new plant in potato processing. We have closed a lumber division that was in the same general area as our Caldwell plant, which has left some building sites, warehouses and buildings available that we could put a plant in that is far enough removed from our food processing operation that these buildings could be used, and they are now available.

We have practically all the equipment that we have previously used, and some more that we have put on at
2262 different intervals along when we would get a little hotter on the subject.

We have practically enough equipment to go into it. It is a matter now of personnel.

Q. What type of equipment is that that you have that

would be usable for onion dehydration, Mr. Jones?

A. Well, we have slicing equipment that we designed and built ourselves. We have grading and sorting equipment. We have sorting equipment. We have belt dryers that we bought particularly for onions that we haven't put to any other use. We have never installed them for onion drying, but we still have them.

Q. Are those belt dryers what we have heard referred to as continuous conveyor dehydrators?

A. Yes.

Q. Would you please describe the distribution system used by the J. R. Simplot Company for its dehydrated potato products?

A. Well, it is rather conventional a system through our own sales force that we have. We have various district salesmen throughout the United States, nine, with a sales force in Caldwell.

These men work with our brokers. We sell through brokers to distributors, and some of it direct to processors or repackers.

2263 Q. Under whose labels do you distribute your dehydrated potato products?

A. Well, the dehydrated potatoes go out through our own label and through numerous buyers' labels.

Q. Would you please name a couple of the larger buyers who sell your dehydrated potato products under their label?

A. The largest ones we sell to right now are General Foods and Kraft.

Q. Have you discussed with General Foods and Kraft the possibility of their distributing instant dehydrated onions processed by your company?

A. Yes, we have.

Q. What was that discussion, sir?

A. Well, they both would like to see us get into the production. They would like to use it along the same as we

would like to. In other words, the onions are light in weight. The potatoes are heavy in weight, and it gives you a real good shipping media.

Q. Mr. Jones, you have described the distribution system used by the J. R. Simplot Company for its dehydrated potato products. To what extent would this distribution system be usable to distribute dehydrated onion products processed by your company?

A. Entirely usable.

Q. In your discussions which you have described
2264 with other officers of J. R. Simplot Company concerning the possibility of going back into the production of dehydrated onion, what consideration has been given to the fact that Gentry, which produces and sells dehydrated onion, is owned and operated by Consolidated Foods Corporation?

A. I don't think it has ever come up as an item of discussion.

Q. In your opinion, Mr. Jones, would the J. R. Simplot Company now be able to compete successfully with Basic Vegetable Products, and the Gentry Division of Consolidated Foods Corporation in the production and sale of dehydrated onion?

Mr. Hays: Objection, Your Honor. Opinion, irrelevant and immaterial.

* * *

2265 Hearing Examiner Kolb: The objection will be overruled.

By Mr. Walker:

Q. Do you wish the question to be read back, Mr. Jones?

A. No, I was just trying to think. There is a way I could answer it. I feel that we could be just as successful going into the onion industry as Basic Vegetable did in going into the industry with dehydrated onion.

We were the first in the vegetable dehydrated program

of companion items, and I think that we wouldn't have any trouble at all.

Q. And you have mentioned that you feel you could compete successfully with Basic. Could you in your opinion also compete successfully with Gentry?

A. Certainly.

Q. Mr. Jones, did the ownership and operation of Gentry by Consolidated Foods Corporation adversely affect the ability of J. R. Simplot Company to produce and market dehydrated onion in the years 1951 to 1956?

• • •

2266 A. No, they didn't. I wouldn't say that; I hardly was aware they were such.

Mr. Walker: No further questions.

Cross Examination

By Mr. Hays:

Q. Mr. Jones, you have previously testified in this case on October 20, 1958. On that date you testified that you expected to go into the dehydrated onion business again.

A. That is right.

2267 Q. Have you done so?

A. No.

Q. Why not?

A. Because I, as I previously said here today, our entire personnel and funds and plant, and everything, has been trying to catch up with this explosion we have had in the potato processing industry.

Q. In other words, your plant in October of 1958, with reference to going into the dehydrated onion business, did not materialize, is that correct?

A. Not as yet. We still haven't changed them.

Q. You still have the plans, is that right?

A. We have still got the plans.

Q. Yes.

A. We still expect to.

Q. Now, how many food processing plants do you have, sir?

A. We have three. We have just completed a new one.

Q. And what was the purpose for which that plant was built?

A. All potato.

Q. Now, in just which one of these three plants do you plan to dehydrate this onion?

A. Not in any of them.

Q. In other words, before you go back in the business, you are going to have to build another plant?

A. As I say, we now have buildings that are avail-
2268 able due to the closing of the lumber division.

Q. When did they first become available?

A. About a year ago, a little over.

Q. Do you plan to use those buildings for dehydrating onion?

A. Well, it is in the program, yes. It can be done.

Q. And when did you expect to put the machinery in those lumber buildings?

A. This I couldn't say.

Q. Why have you not dehydrated garlic, Mr. Jones?

A. It isn't grown in that area. We did at one time, experimentally. It is now grown in that area.

Q. Is that the only reason that you have not dehydrated garlic?

A. That, plus the odor.

Q. Where are these lumber, former lumber facilities located?

A. Well, they are on the west end of 80 acres where the food processing plant is on the east end.

Q. Is there presently any equipment in that former lumber factory?

A. There is equipment there stored there. It isn't installed, if that is what you mean. The equipment is in the buildings, yes.

Q. And what kind of equipment is this, sir?

A. All of the onion equipment we own is in there.

Q. It is right in that building?

A. Stored there, yes.

2269 Q. How long has it been there?

A. Oh, a various length of time.

Q. Now, what was that building used for when you used it for your lumber business?

A. We had a planing mill and storage of finished dry lumber.

Q. Now, what did you do with that equipment?

A. Sold it.

Q. When?

A. I would say starting about two and a half to three years ago, and it has continued, and we still, I think there may be a piece or two of it kicking around, yes.

Q. Was that building vacant on October 20, 1958?

A. No.

Q. When did it become vacant?

A. Well, I say it has been a continuing operation since then to liquidate this lumber division.

Q. When did you first start liquidating the lumber division?

A. I couldn't say.

Q. When was that liquidation completed?

A. About a year and a half—less than that—about a year ago.

I don't quite follow this, but I don't personally have anything to do with the lumber division. So you are asking me questions about which it is a little difficult for me to answer.

2270 Q. Well, now, where — you know where that building is, don't you?

A. Yes, I do.

Q. And you know how long it has been vacant, don't you?

A. Not exactly.

Q. You know approximately how long it has been vacant?

A. Yes, sir.

Q. Approximately how long?

A. Just what I told you.

Q. What was that?

A. A little over a year.

Q. Do you store anything else in that vacant building?

A. There is some fertilizer stored in it, but mostly machinery that we have moved out of the processing plant.

Q. During the period from 1950 to the present, when your company processed dehydrated onion, was a substantial part of that business with the Government?

A. Yes.

Q. Was it on a cost-plus basis?

A. No.

Q. Was it on a bid basis?

A. Yes, sir.

Q. In each of the years from 1950 until you stopped processing dehydrated onion, how much of the onion that you sold was sold to the Goverment or to the Army?

2271 A. I couldn't say, most of it.

Q. Approximately how much?

A. Most of it. That is, I would say over half of it.

Q. In each of those years?

A. Well, now, this I wouldn't know. I don't have any of the sales figures.

Q. During that period how many salesmen did you have selling dehydrated onion?

A. It would vary from myself up to four or five.

Q. Four or five salesmen in the field?

A. Uh-huh, that with selling potatoes primarily.

Q. They incidentally sold dehydrated onion?

A. Once in a while when I could talk them into it.

Q. They were primarily out there to sell these new potatoes, weren't they?

A. That is correct.

* * *

2272 FRANCIS HERWOOD was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. Francis Herwood, H-e-r-w-o-o-d.

Q. Where do you live, Mr. Herwood?

A. Pasadena, California.

Q. What is your home address, sir?

A. 218 La Mirada.

Q. What is your occupation, sir?

A. Vice-president, Bank of America, National Trust and Savings Association.

Q. Where is your office located, sir?

A. 650 South Spring Street, Los Angeles.

Q. Where is the principal office of the Bank of America?

A. San Francisco, California.

Q. Would you please describe the relationship between the Los Angeles and the San Francisco offices of that bank?

2273 A. Los Angeles Headquarters has jurisdiction over something over 300 branches in Southern California. We have the direct administration and jurisdiction over all of the loans in those branches.

In Northern California, the San Francisco headquarters has the same authorities and responsibilities with respect to the 400 branches in Northern California. There is a coordination between the Los Angeles Headquarters and the San Francisco Headquarters by virtue of the fact that San Francisco is the Head Office of the Bank of America.

Q. When did you first go to work for the Bank of America, Mr. Herwood?

A. August 8, 1923.

Q. Would you please state the positions you have held with the Bank since that time?

A. I was a messenger until the latter part of 1924. 1924 I was made a note teller in what we call the note department.

In 1928 I was made head of the note department.

1931, I was appointed assistant cashier as a general lending officer.

1935, I was made assistant manager.

In 1945 I was made manager.

In 1948 I was appointed vice-president and manager. This was all in the industrial, international office in Los Angeles. It is now called the industrial office.

2274 Since or, rather, in 1952 I was appointed vice-president. It was actually a transfer in position as vice-president to the Los Angeles Headquarters, until 1954.

In 1954 I was placed in charge of loan supervision.

In 1960 I was made administrative credit executive, with duties of Chairman, Southern California Loan Committee, Vice-Chairman, Southern California Finance Committee, in the handling of major borrowing accounts.

Q. Now, Mr. Herwood, the international office in which you worked, and of which you became manager in 1945, was a branch of the Bank of America?

A. That is right.

Q. When did you first become a member of the Southern

California Loan Committee?

A. In January 1954.

Q. When did you become Vice-Chairman of that committee?

A. January 1954.

Q. When did you become Chairman of that committee?

A. May 1960.

Q. And when did you become Vice-Chairman of the Southern California Finance Committee?

A. January 154 [sic].

Q. When did you have your first experience, Mr. Herwood, in work at the Bank of America in connection with the making of loans?

2275 A. Actual authority for making loans was granted in 1928 or 1929, but all of the time from 1924 to 1928 or '29 I was working with loans, and some even before 1924.

Q. Now, I believe you have testified, Mr. Herwood, that you were a manager of the international office in the years 1945 to 1952, is that right?

A. Correct.

Q. And is that the same thing, because that is a branch, as being a branch manager of the Bank of America?

A. It is.

Q. While you were a branch manager during those years, what is your estimate of the total amount of loans negotiated by you?

A. In excess of $200 million.

Q. Would you now please describe the duties that you have performed—I am sorry—the duties that you do perform at the present time and in the positions you have stated you now hold with the Bank of America?

A. My principal duty would be presiding over the Southern California Loan Committtee and the jurisdiction over the credits that come to it from three lending departments, three administrative lending departments in our

Southern California headquarters.

I act as chairman of the Southern California Finance Committee in the absence of the chairman, and another vice-chairman.

2276 I negotiate credits or treat with credits of substantial sums by which I mean upward of a million dollars, in the case of those credits that require an administrative credit executive to handle them for contact reasons, or for reasons of continuity that these have been clients of mine through the years.

In addition, I will consult on policy, consult on loan selection procedures, consult on loss collection administration, and participate in relationships with major borrowing customers.

Q. Now, you have testified, I believe, Mr. Herwood, that you were head of the loan supervision department in the years 1954 to 1956, until you took up your present duties, is that right?

A. I did.

Q. Would you please describe how the loan supervision department operates?

A. The loan supervision department has numerous loan supervisors on the one hand and credit supervisors, as we term them, on the other hand. These are divided into area groups with a more senior man than the loan supervisors or the credit supervisors in charge of that area.

There are 23 section heads who are over these area groups, and the section heads are both responsible to head of loan supervision.

Q. What is the lending limit of the supervisors that you have mentioned that work in the loan supervision

2277 department?

A. Their lending limits range up to $150,000. The area supervisors have lending limits up to $200,000. The heads of the two sections have lending limits up to $250,000,

and the head of loan supervision has a lending limit of $300,000.

Q. Now, will you please describe the administrative procedures followed in the Bank of America for the handling of business loans in the Southern California area in amounts over $300,000?

A. These all are generated in our branches. The branch lending officer usually is the branch manager, because the branch manager is responsible for all loans in his branch; the branch lending officer has the discussions with the client, obtains the financial statements and operating statements and relevent credit data, obtains general industry data, and information, general information on the credit reputation of the particular customer.

So often this is historical with us in our own files. He then transmits this with his recommendation to his loan supervisor headquarters.

The loan supervisor reviews the information, calling upon industry data, et cetera, economic data that would be in our own files or in our own offices.

He, after consultation with the head of loan supervision, would make his recommendation to the Southern California Finance Committee, if the credit exceeded $300,000 2278 and did not exceed $1 million.

Did I say Southern California Finance Committee? I meant Southern California Loan Committee, I am sorry.

If the application exceeded $1 million and/or if there were affiliated owings of that particular borrower that may be aggregated in excess of $1 million, then the credit application would go with the recommendation for approval or disapproval to the Southern California Finance Committee.

Q. Putting this together, Mr. Herwood, from 1954 to 1960 you were head of the loan supervision department, which has final authority and responsibility for loans up to $300,000. is that right?

A. That is right.

Q. And from 1954 to 1960 you were vice-chairman, and are now chairman of the Southern California Loan Committee, which has final authority for loans from $300,000 up to $1 million, is that right?

A. That is right.

Q. And from 1954 to 1960 you have been vice-chairman of the Southern California Finance Committee which has final responsibility for loans over $1 million, is that right?

A. That is right.

Q. What kind of companies have made loan applications to the Bank of America on which you have worked, Mr. Herwood?

A. Most any company imaginable that is part of
2279 the California economy.

Q. Would this include food companies?

A. Yes, any food companies.

Q. Would it also include any food dehydration companies?

A. Yes.

Q. What types, sir?

A. The Bank in general would have several types of companies in that business. My own direct experience has been in the capsicum field.

Q. For what purposes were these different types of loans made that you have testified you worked on in your experience with the Bank of America?

A. You are now referring to general loans?

Q. Yes, the general loans that you have worked on over the years.

A. Construction, both of buildings and underground, and dams; poultry processing and distribution; wine production, processing and distribution —

Q. Excuse me, Mr. Herwood, if I may interrupt you, because I know there have been so many that this will take considerable time. I didn't make myself clear.

What I would like to know is, for what purposes did the companies that sought these loans from you want the

money over the years?

Do you understand my question?

2280 A. I am not sure, but let me try to answer it this way.

For the — generally speaking, for the production and movement of commodities.

Is that—

Q. Yes. And also for capital expenditures by these companies?

A. Also for capital expenditures.

Q. Mr. Herwood, approximately how many loan applications by business enterprises have you worked on during your career of over 30 years in lending activities of the Bank of America?

A. In excess of a thousand, sir.

Mr. Walker: Your Honor, we have called Mr. Herwood as an expert to testify concerning the availability to Gentry of credit from the Bank of America, and this completes the voir dire on Mr. Herwood's qualifications.

I wonder if counsel wishes to cross-examine on the voir dire at this time, or reserve it until the completion of the direct examination?

Mr. Hays: I ask that all cross-examination be reserved, Your Honor.

Hearing Examiner Kolb: All right.

By Mr. Walker:

Q. Mr. Herwood, have you at our request conducted a study of the financial aspects of the Gentry Division of Consolidated Foods Corporation?

A. I have.

2281 Q. Would you please state the nature and purpose of that study?

A. The nature and purpose is to determine what amount of bank credit might have been available to Gentry as a separate entity for carrying on its business of production,

processing, distribution of commodities in its business, and possibly to provide some funds for the capital funds for facilities.

Q. Would you please describe what you did in making that study in general terms, please, Mr. Herwood?

A. We sought financial data from Gentry or Consolidated, reconstructed the financial statement, investigated the credit reputation of Gentry, and from it determined the basic credit qualifications.

We then looked at what commodities could have been placed under warehouse receipts as a basis of credit. We surveyed the accounts receivable lists to see their qualifications for credit.

We considered commercial unsecured lines of credit, and we considered an unsecured term loan type of credit and gave general consideration to a real estate mortgage type of credit which we regard as a term loan secured by real estate.

Q. Did you in the course of this study interview any officials of Gentry?

A. I did.

Q. And were these interviews the type which you
2282 would normally conduct in the conduct of your business as a loaning official with officials of companies seeking a loan?

A. They were.

Q. Did you make any examination of the plant or facilities of Gentry?

A. I have seen both of their plants.

Q. And that was done in the course of this study, is that right, Mr. Herwood?

A. That is right.

* * *

2300 By Mr. Walker:

Q. Have you, Mr. Herwood, ascertained amounts

which, in your opinion, would have been recommended by you and granted as loans by the Bank of America to Gentry as an independent company, if it had not been a part of Consolidated Foods Corporation in the years 1952 to 1959?

Mr. Hays: I object, Your Honor. It calls for an opinion on a speculation which is irrelevent and immaterial.

• • •

2301 Hearing Examiner Kolb: The answer to the question would be yes or no.

The objection will be overruled.

By Mr. Walker:

Q. You may answer the question, yes or no.

A. Yes.

Q. How did you derive those amounts?

Mr. Hays: Same objection, Your Honor.

Hearing Examiner Kolb: Objection will be overruled. You may answer.

A. Primarily from the cash investment into Gentry.

We also — by Consolidated or cash advances by Consolidated to Gentry.

We also took into consideration in some of the years the income tax payment requirement.

By Mr. Walker:

Q. Is it true that the amounts which you derived are the highest amounts in each fiscal year owed by Gentry to Consolidated Foods Corporation as derived from Respondent's Exhibit 183?

Mr. Hays: Same objection.

Hearing Examiner Kolb: Overruled.

2302 By Mr. Walker:

Q. This is 183, Mr. Herwood.

A. They are.

Q. Mr. Herwood, based upon your experience and upon your study of Gentry, as you have described it—I am sorry, will you strike that.

What are those amounts, please, Mr. Herwood?

Mr. Hays: Same objection.

Hearing Examiner Kolb: Overruled.

A. In the fiscal year June 30, 1951 to June 30, 1952, an overall line of credit of $825,000; in the—

Q. Just the amounts, please, Mr. Herwood, the years and the amounts.

A. The fiscal year ending 1953, $375,000; the fiscal year ending June 30, 1954, $1,100,000; the fiscal year ending June 30, 1955, $1,100,000; the fiscal year ending June 30, 1956, $1,400,000; the fiscal year ending June 30, 1957, $1 million; the fiscal year ending June 30, 1958, $500,000; fiscal year ending June 30, 1959, $500,000.

Q. Now, Mr. Herwood, based upon your experience and upon your study of Gentry, as you have described it, in your opinion would you have recommended and would the Bank of America have granted loans to Gentry as an independent company in the amounts that you have just stated?

Mr. Hays: Objection; irrelevant and immaterial, 2303 speculative.

Hearing Examiner Kolb: The objection will be overruled.

A. Yes.

Mr. Walker: At this time I will introduce Respondent's Exhibit 188-A through 188-Z-7 for identification.

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(The document referred to was marked Respondent's Exhibit 188-A through 188-Z-7 for identification.)

By Mr. Walker:

Q. Mr. Herwood, I have shown you a group of documents marked Respondent's Exhibit 188-A through 188-Z-7.

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2304 By Mr. Walker:

Q. Do these documents, Mr. Herwood, state the basis for that opinion which you have just given?

A. They do.

Q. Do these exhibits — I am sorry — do these documents also state the terms and conditions on which this credit which, in your opinion, has been extended?

A. They do.

Q. Is all the data in these exhibits obtained from financial data supplied to you by Consolidated Foods Corporation with the exception of some data for a period of time prior to 1951?

A. It is.

Q. Were you supplied with audit reports for Gentry, Inc., and the Gentry Division of Consolidated Foods Corporation for fiscal years 1951 through 1959?

A. I was.

Q. And insofar as the data shown in this exhibit is 2305 obtainable from those audit reports, was it so obtained?

A. It was.

Q. Did you have financial data for Gentry for any years prior to 1951?

A. Yes, for the fiscal year ends June 30, '47, June 30, '48, June 30, '49 and June 30, 1950.

Q. Would you please describe what that material was?

A. The 1947 comparative, or rather condensed figures of financial statement and sales profits was taken from a Dun & Bradstreet Report in our credit files.

The 1948 and 1949 figures were taken from Gentry's annual report to stockholders, which report is also in our old credit files.

The June 30, 1950 figures were taken from a Dun & Bradstreet Report, again which said that they came from Gentry's annual report as of that date.

Q. For what purposes were those figures obtained

from the material you have just described, used in the preparation and writing of Respondent's Exhibit 188?

A. You are referring to figures, 1947 and '8, and so forth?

Q. Yes, sir, the ones before 1951.

A. Before 1951, they were to show, used to show historical trends in the company profits, profit in the company, and we used them in appraising whether or not a term loan might have been made or a mortgage loan secured by real estate might have been made to Gentry as a 2306 separate entity in 1951, or some date subsequent thereto.

Q. And none of that data taken from those materials for years prior to 1951 was used in the preparation of Respondent's Exhibit 186 or 187, is that right?

A. None of it was used, no.

Q. Are those sources that you have described for this financial material prior to 1951 sources that you ordinarily use in the performance of your business as a loan executive at the Bank of America?

A. We frequently use such sources for this purpose.

Q. Now, Mr. Herwood, is the material, all the material which you have relied on in giving your opinion, which you gave earlier in your testimony, the kind of material that you have customarily relied upon in making recommendations and the decisions regarding the extending of credit in the performance of your duties at the Bank of America?

A. It is.

Mr. Walker: Your Honor, at this time I will offer Respondent's Exhibit 188 in evidence.

This may seem to be an unusual way to do this, but I really thought that it would be easier for counsel supporting the complaint, and for his people, accountants, and so forth, that have to, if they wish to review this material, to have

the basis for the opinion, and the terms and con-
2307 ditions, as set forth in writing in this form, rather than to take the very long period of time that would be required to bring it out by oral testimony.

Hearing Examiner Kolb: Do the figures you have included in these statements, are they in the record at the present time now?

Mr. Walker: Which figures are those, sir?

Hearing Examiner Kolb: Well, your financial information here. For instance, you speak about Dun & Bradstreet Report figures, which also appear on the annual report. Is the annual report in the file?

Mr. Walker: No, Your Honor. This much is true. As to any data or figures that are contained in Respondent's Exhibit 188, the source material will be made available for inspection by counsel supporting the complaint in the same form and manner as the source material for Respondent's Exhibits 183 through 185 that we discussed when we offered them in evidence through Mr. Moore, so it will be all available for verification, examination, and whatever his wish.

Mr. Hays: Mr. Walker, are these Mr. Herwood's statements, these documents here?

Mr. Walker: These documents here I believe I brought out they were prepared under his supervision and control by members of his staff. I am sorry, I did forget to ask that. You are quite right.

2308 By Mr. Walker:

Q. Were these documents, that is, Respondent's Exhibit 188, prepared under your supervision and in the regular performance of your duties at the Bank of America?

A. They were.

Mr. Hays: May I ask the witness a question?

Mr. Walker: You surely may.

Cross Examination

By Mr. Hays:

Q. Are these your statements written out?

A. The work was not done by myself.

Q. Would you testify to what is contained in these documents? Would you testify under oath and make the same statements on the stand that are contained in these documents?

A. I will.

Q. Do you, then?

A. I do.

Hearing Examiner Kolb: No objection?

Mr. Hays: No.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit 188-A through 188-Z-7.

(The document referred to, heretofore marked Respondent's Exhibit No. 188-A through 188-Z-7 for identification, was received in evidence.)

• • •

2317 Chicago, Illinois
February 20, 1961

2318 PROCEEDINGS

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2319 IVAN H. MORGAN was thereupon called as a witness by the Respondent, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rothe:

Q. Will you state your full name and address for the record?

A. Ivan H. Morgan; Austin, Indiana.

Q. What is your occupation, Mr. Morgan?

A. President of Morgan Packing Company, Inc.

2320 Q. How long have you held that position?

A. About seven or eight years.

Q. Prior to the time you became president of Morgan Packing Company, what was your connection with the business?

A. I was a partner.

Q. In what business is Morgan Packing Company engaged?

A. Engaged in the packing and selling of vegetables, and we call them dry pack commodities, such as pork and beans, kidney beans, lima beans, kraut, hominy, things in that category.

Q. Where are your company's general offices?

A. Austin, Indiana.

Q. Where do you have plants?

A. The main plant is at Austin, Indiana. I have one in Scottsburg, Indiana; Brownstown, Indiana; Columbus, Indiana, and Franklin, Indiana, and Red Key, Indiana.

How many have I got? Five, yes.

Then I have a leased plant that I operate.

Q. To whom do you sell your products?

A. Anyone that wants to buy them.

Q. More particularly, to what class of buyers do you sell?

A. Wholesale grocers, chain stores, buying chain

2321 co-ops, you might call them. That is it.

Q. Under whose labels do you sell your products?

A. Under two labels. One is a label that we call factory label, which is a label that we own and control; the other is a buyer's label, or a label that the person or company that purchases the product puts their label on, or we put it on for them.

Q. Approximately how is your business split between private label and factory label?

A. Approximately 50-50.

Q. Through what channels do you market your products?

A. What do you mean what channels?

Q. How do you sell your products?

A. It is sold through brokers; some buying organizations buy through their buying organization; some chains buy certain commodities through their purchasing division for that particular chain.

Q. Do you use any salesmen in the field?

A. We have a sales organization. What is commonly known as salesmen in the field that call on customers regularly or periodically, no, we do not.

Q. During what period of time has Morgan Packing Company sold products to any units of the Consolidated Foods?

A. I would say before Consolidated Foods got in 2322 the grocery business.

Q. Have you sold Consolidated Foods through brokers or directly?

A. It has been sold through brokers, to the individual units or I don't know what you might call them—the location in which a central warehouse is located.

Q. Have you sold what you call factory label products or private label products to Consolidated Foods?

A. Both.

Q. What was the approximate volume of your company's sales to Consolidated and all its units together in 1958?

A. $430,000.00.

Q. What has been the trend of your sales to Consolidated Foods, and by that I mean all units since about 1950?

A. It has been up and down.

Q. Is there any particular reason for the ups and downs?

A. Oh, you could find a lot of reasons; but primarily, the geographic location we are located in in the packing of the things that we pack. The closeness of ourselves to some of their units might make it go up and down.

Q. What percentage did your sales to Consolidated units bear to your total sales in 1958?

2323 A. Less than 2 per cent.

Q. Has that relative percentage remained approximately the same through the years since 1950?

A. I think if you would take it on a two or three year average in any time during that period, it will be relatively the same, yes.

Q. Please describe your duties as president of the company.

A. Well, I run the place.

Q. Who determines your company's purchasing policies?

A. I do.

Q. Where do you do your buying for all the plants?

A. Austin, Indiana.

Q. Do you have a purchasing department?

A. Yes.

Q. Do they consult you on purchasing problems?

A. Major problems, yes; certain types of problems, yes; insignificant problems, no.

Q. What do you consider an insignificant problem?

A. Well, if they decide they needed a dozen screw drivers or fly swatters, I wouldn't be consulted.

* * *

2325 (Said document, heretofore marked Respondent's Exhibit No. 190 for identification was received in evidence.)

Hearing Examiner Kolb: It is understood that Re-
2326 spondent's Exhibit 190 is received, subject to the right of the attorney for the Commission to check the underlying data.

By Mr. Rothe:

Q. Mr. Morgan, prior to 1954, which is the last year for which we have figures on your purchases from Basic and Puccinelli, which company was your company's major supplier for dehydrated onion and garlic?

A. Basic.

Q. Would you please describe for us your company's policy in considering a new source of supply for raw material ingredients?

A. That would depend entirely on what type of raw material ingredient your question covers.

Q. All right. Let's talk then about dehydrated onion or garlic.

A. Dehydrated onion and garlic on all those products of that nature, we try to secure two or three sources of supply. It takes about a year and a half to two years to put a source of supply on the approved list in the purchasing department. The reason for that is that the product, or the component part of our finished product is small, but important.

Therefore, we have to have what we call in the trade a seasoning period which merely determines for us
2327 what a product of this nature will do over a length of time.

Q. What does the seasoning process consist of?

A. On onion and garlic powder?

Q. Yes.

A. Well, first of all, you would run probably a small laboratory batch that might consist of a dozen, say, catsup, for example. Those would then be placed in both refrigeration and incubation, and held for at least six months and then checked for flavor.

Q. Then what would happen?

A. The next step would be, if you still had an interest in that supplier, you would purchase a large enough quan-

tity to make what we call a batch.

Well, a batch would be about 350 gallons, which would make 400 cases. Part of this lot would then go through the same process that the small original lot did.

Q. How long would that take?

A. It would take a year, a year and a half to two years.

Q. After that part of the seasoning process is over, what happens next in the process of selecting a supplier?

A. Well, the next thing — you see, if you have three or four good suppliers of a product — if you don't have, then you consider the one that you are testing, and he is
2328 then put on the approved list and is given a certain amount of business.

Q. You said earlier that onion and garlic powder, while small in quantity, is important in your catsup and chili sauce.

Why is that?

A. That is important, because per dollar that you spend for onion and garlic powder and the dollar involved in a finished product, it is small; but a little onion powder or a little garlic powder and a little of several other condiments would and could destroy my flavor for probably a million or two million dollars worth of catsup, — I am using that for an example.

Q. Did you ever accept a new supplier's material on the basis of laboratory test of the material alone?

A. We have no laboratory that does any testing of strength of the onion and garlic powder. Our laboratory is only used for control of the product we manufacture. It is not a testing laboratory.

Q. Can your purchasing department order any raw materials without laboratory approval?

A. Oh, yes, many of them.

Q. Could it order onion and garlic without laboratory approval?

A. No.

2329 Q. Looking once again at Respondent's Exhibit 190, what accounts for the small purchases of onion and garlic from Gentry in 1951?

A. The reason for this would be obviously that we were merely trying out this product in some of our products.

Q. In the seasoning process we were talking about?

A. Yes.

Q. Why would there have been no purchases from Gentry in 1952?

A. Well, that, as I previously stated, is about the time that it would take to do what we call properly seasoning our products to find the result.

Q. Then, if you look at Respondent's Exhibit 190, you will see that your company bought 10,500 pounds of onion from Gentry in 1953.

What would be the reason for that purchase, or those purchases?

A. I would say the reason for that purchase would have been that we found the onion satisfactory, and we decided to make a more extensive test or use of it.

2330 Q. Why have your purchases from Gentry continued since 1953?

A. As soon as we secured the approval of the product to my satisfaction of the quality, we naturally give to the suppliers sufficient business to keep him, you might say, interested, or at least to keep him partially happy.

Because otherwise he would not be a source of supply, and would be unable, or not have the inclination to furnish us the quantities we needed when we needed it.

Q. Were there any other reasons for the purchases from Gentry?

A. No.

Q. About how much of your company's requirements of capsicums, such as paprika and so forth, has your com-

pany purchased from Gentry?

A. I don't think any.

Q. Do you use paprika?

A. Yes.

Q. In any quantity?

A. Yes, you would consider us a large user of paprika.

Q. Mr. Morgan, there is a reference in some of the documents which are in evidence in this case concerning your company to a Mrs. Eversole.

What was her job with your company?

2331 A. She has worked for many years in the purchasing department. She writes up orders, types up orders; she does some telephone conversations with suppliers; she occasionally will meet salesmen when they call at the office, and that is about it.

Q. Does she have authority to commit your company as to a source of supply?

A. Oh no.

Q. Mr. Morgan, we have informed the Hearing Examiner that we have talked to witnesses prior to their testimony.

Before you were contacted in connection with your appearance here as a witness had you ever talked with anyone about a relationship of any kind between Morgan's sales to Consolidated or any of its units and its purchases of dehydrated onion or dehydrated garlic or capsicums, such as paprika?

A. No.

Q. Have you had any kind of communication on this subject prior to the time you were contacted?

A. With who?

Q. With anyone.

A. I have talked to you.

Q. I said prior to that.

A. Prior to that time, I have not.

2332 Q. What effect has the fact that Consolidated is a customer of yours had on the volume of your purchases which you have made of dehydrated onion and dehydrated garlic or capsicums since 1950?

A. None whatever.

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Cross Examination

By Mr. Hays:

Q. What was your position with Morgan Packing Company in 1950?

A. A partner.

Q. What did you do as a partner?

A. That is a general question and would require a general answer. I did everything pertaining to the operation of the Morgan Packing Company.

Q. You did the buying?

A. Yes.

2333 Q. You did some selling?

A. A little.

Q. What selling did you do in 1950, to what customers?

A. Direct selling, no. What I meant by that, by my answer, was that I have knowledge of those purchasing and selling, and of production.

Q. Did you sell to Consolidated Foods in 1950?

A. Did Morgan Packing Company?

Q. Yes.

A. I don't know. Give me the report.

I assume that I did, although the records are not available.

Mr. Walker: I do not believe the witness understood the question. Would you read it back?

Hearing Examiner Kolb: Will the reporter please read the question?

(The reporter read the question as follows:

"Question: Did you sell to Consolidated Foods in 1950?")
By the Witness:

A. To Consolidated Foods, I would say no. I would say we sold to many of the, or some of the people that were later associated with Consolidated, but I have no knowledge of when Consolidated Foods acquired a
2334 certain distributing company.

Q. When did you first meet Mr. Kennedy of Consolidated Foods?

A. Is that the gentleman I had a cigarette with in the hall?

Q. No, sir.

A. The gentleman I saw just now?

Mr. Walker: He said no, that he was not the gentleman you just met in the hall.

The Witness: Then, I don't know Mr. Kennedy.

By Mr. Hays:

Q. You don't know Mr. Kennedy at all?

A. Now, I may have met him briefly at a canners' convention, or something of that nature; but as far as meeting him to discuss anything or to talk about anything, I do not know the gentleman.

Q. Who were your other partners in 1950?

A. My father, Ivan C. Morgan, and my grandfather, J. S. Morgan.

Q. What did they do in 1950 as partners in your company?

A. My father had the same job that I did. He knew all about everything. My grandfather was interested more in the growing operation, or the contact with the farmers, that sort of thing. He didn't get into—my grandfather
2335 didn't get into the banking and other parts of the business, like my father and I did.

Q. In 1950 did your father handle selling for the com-

pany?

A. Do actual selling?

Q. Yes.

A. I would think you would have to define actual selling. Now, he made no calls, or he would take no orders over the 'phone, or anything like that. He did have a general knowledge of all that was sold.

Q. What did he have to do with the sales policies?

A. He determined that.

Q. Was he your superior?

A. No, we were equal.

Q. Did you help him determine sales policies?

A. Yes.

Q. In 1951 who was responsible for the determination that dehydrated onion would be bought from Gentry?

A. I don't understand.

Q. In 1951 who was responsible for the determination that dehydrated onion would be bought from Gentry?

A. That small amount could have been determined by the lab that wanted to try it out. It could have been determined by one of the purchasing boys.

2336 Q. In 1951 did you have a laboratory that tested dehydrated onion and dehydrated garlic?

A. We had no test on those products as such, no, sir.

Q. What do you mean you don't test them as such?

A. We only test them as they affect the product in which we put them.

Q. In other words, you put them in the product and then test the product, is that right?

A. That is it, yes.

Q. In 1951 who was in charge of that type of testing?

A. That would have been done in the laboratory, and at that time Dr. Kline was in charge of the lab, and Mr. Hinds would have been a practicing chemist, and then I

had two or three other boys in the lab that I don't remember their names.

Q. In 1951 into what products did you put dehydrated onion?

A. That would have been put into tomato catsup, pork and beans, and those are the two that I can think of.

Q. In 1951 did you make any determination with reference to another source of supply for dehydrated onion, other than Basic or Puccinelli?

A. In that particular year, I do not know whether I made such a determination at a certain time. It is my policy that we should have more than one source of supply.

2337 Q. Did you have more than one source of supply in 1950 of dehydrated onion?

A. I would say yes, at least we were attempting to.

Q. What was your other source of supply, or what were your sources of supply in 1950?

A. The majority of it, I think, was bought from Basic; but we would likely have tested other products during that period. I could not answer that question.

Q. As far as you know, in 1950 the only company you bought dehydrated onion from was from Basic?

A. Yes.

What I mean by that, I might qualify that by saying we may have received a few pounds from other suppliers, from which we run tests. But I do not consider that a supplier.

Q. All right.

In 1951 how was the 275 pounds of dehydrated onion tested in your end product?

A. That quantity would have been put into a batch, I would say. A batch would consist of either 300 or 500 gallons of catsup.

A batch of bean sauce would consist of 150 to 300 gallons of bean sauce.

Then you would determine how many cases—I mean, I could not give you the accurate number of 14-ounce
2338 bottles you would get from that catsup, from that so-called batch.

Q. All right.

What would you do with the batch once it had been bottled?

A. When the batch had been bottled, you would—if it were a small lab sample, you would keep all of it in under a controlled situation, either in incubators or in refrigeration, or room temperature.

If it were a larger quantity, you would keep a proportionate part of each of it—say, this batch had run for 45 minutes, you might take out four bottles every five minutes, which you would keep for observation.

2339 Q. For how long did you keep it for observation in 1951?

A. It is normally kept for six months to a year for the first observation.

Q. In other words, to take on a new supplier involved using this raw material in your finished product and holding the total quantity of the finished product for a year?

A. I don't understand the question.

* * *

Hearing Examiner Kolb: Would you read the question again?

(The reporter reread the question as follows:

"Question: In other words, to take on a new sup-
2340 plier involved using this raw material in your finished product and holding the total quantity of the finished product for a year?")

Hearing Examiner Kolb: The witness may answer.

By the Witness:

A. That would be the normal custom, yes.

By Mr. Hays:

Q. Is that what you did in 1951?

A. That is what we always do.

Q. All right.

Now, in 1951, approximately how many cases of catsup would be involved insofar as the 27 pounds of dehydrated onion was concerned?

A. I am unable to give you that information. That would take a formula, a catsup formula, and I would have to break it down and use a slide-rule to give you the information; and I do not have that available.

Q. Could you give us any approximation as to how much catsup would have been involved?

A. No, I can't.

Q. How much dehydrated onion is there in a bottle of catsup?

A. You are asking me to guess the answer to that question. I would say you would have to go to four or five 2341 decimals for a 500 gallon, in ounces.

Q. Now, in 1958 you purchased dehydrated onion and dehydrated garlic from both Basic and Gentry, is that right?

A. That is right.

Q. Now, when you make your catsup, when you made your catsup in 1958, did you put only Basic dehydrated onion in one batch, and Gentry dehydrated onion in the other?

A. No.

Q. Do you still carry out this type of testing that you described?

A. We do that constantly on every product.

Q. Well, assume you had a bad batch and you concluded it was due to dehydrated onion.

How would you know who supplied the dehydrated onion that was bad?

A. I wouldn't have bought that much if it was going to be bad.

Q. Well, I know you intended for it not to be bad, but sometimes products turn out bad, don't they?

A. Very, very rarely do they ever turn out bad.

Q. When they do turn out bad, under your procedures you wouldn't know which supplier had supplied the bad dehydrated onion, would you?

A. Yes, we would know, because you would have
2342 the cans that were used of a component.

The day and the hour that the cans are packed is marked on top, the hour in which they are packed. You could easily back up and find out which product was bad, yes.

Q. In other words, you don't have batches that involve both Gentry dehydrated onion and Basic dehydrated onion?

A. In operational practice you would not have such a batch; it is possible you could have.

Q. Do I understand you, then, that when you pack catsup and use dehydrated onion in it, you use a full run of Gentry dehydrated onion for your batches?

A. That would be the normal procedure, yes.

Q. Is there ever a time in your canning operation that you have both Gentry dehydrated onion and Basic dehydrated onion available?

A. Yes, I would say that would be quite possible.

Q. Are your people instructed to use only one type of dehydrated onion?

A. No.

Q. Are they free to use either of the two, if they are running a batch?

A. Yes.

Q. In your direct examination when referring to the quantities of sales to Consolidated Grocers, Consoli-
2343 dated Foods and its subsidiaries, you said it ran less than 2 per cent.

Well, that could be from one-tenth of one per cent up to 1.99.

Could you give us a closer idea of what your annual sales to Consolidated Foods were?

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2345 The Witness: It is less than 2 per cent by a very small margin.

Does that answer your question?

Mr. Hays: Yes. Thank you.

By Mr. Hays:

Q. How many customers do you have, Mr. Morgan?

A. How many customers do I have?

Q. Yes.

A. About 2500.

Q. How many customers do you have that you sell more to than you do to Consolidated Foods?

A. I don't understand your question.

Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows:

"Question: How many customers do you have that you sell more to than you do to Consolidated Foods?")

By the Witness:

A. Twelve to 15.

By Mr. Hays:

Q. Do you consider Consolidated Foods an important customer?

A. Any customer is a good customer.

2346 Q. The more they buy the better they are, isn't that true?

A. That is exactly right.

Q. In selling, has it been your policy to try to keep your customers satisfied from the point of view of service?

A. I don't know your definition of the word satisfied according to service.

I don't understand the expression.

Q. Well, you try to keep them happy, don't you?

A. I try to keep them coming back and buying more merchandise, yes.

Q. And one of the ways to do that is to give prompt delivery?

A. Yes.

Q. Another way you do that is to give reasonable price?

A. That is right.

Q. And another way you do that is to maintain your quality standards, is that right?

A. That is correct.

Q. Now, do you find it advisable to keep on a friendly term with buyers of your customers?

A. It is naturally an advantage to be on a friendly term with a buyer, yes.

2? Q. How do you account for the fact that your purchases from Gentry in 1954 were less than half of what they were in 1953?

A. I don't understand. What year did you say?

Q. How do you account for the fact that your purchases from Gentry in 1954 were less than half of what they were in 1953?

A. That could be for a number of reasons. One reason could be that we didn't pack as much overall catsup that year.

Another reason could be that we felt what we had given Gentry in 1953 was too much, and we cut it down in 1954.

I couldn't give you a definite answer on the exact reason.

Q. How would you determine whether you purchased too much from a particular supplier?

A. That is a hypothetical question, in my opinion, but to give you the same type of an answer, if I were to find I was too dependent on a supplier, that would be too much.

Q. Respondent's Exhibit 190 indicated that in 1956 you

purchased 2400 pounds of garlic from Basic, but you purchased no garlic from either of the other two sources indicated, either Gentry or Puccinelli.

2348 Did you purchase in 1956 garlic from any sources other than Basic?

A. There may have been. I do not know. I am unable to give you a definite answer.

Q. Well, in 1956, you did have a policy of purchasing from more than one supplier, isn't that true?

A. That is right.

Q. Did you have that policy of purchasing from more than one supplier insofar as dehydrated garlic was concerned as well as dehydrated onion?

A. Those items to me are considered condiments, and as I previously stated, we try to purchase those from two or three suppliers.

Q. Well, dehydrated garlic is just as critical insofar as the small amount going into a larger amount of finished product is concerned as dehydrated onion, isn't it?

A. Yes.

Q. Isn't it a matter of concern to you as to who your suppliers of dehydrated garlic are and were?

A. No.

Q. Well, isn't it a matter of concern to you that you have more than one?

A. Yes.

Q. Can you tell me whether or not in 1956 you had 2349 more than one supplier of dehydrated garlic?

A. I either had more than one, or I had a carryover. I can't answer which is which.

Q. Would you consider the 180 pounds of garlic that you purchased from Gentry in 1955 as a carryover?

A. 180 pounds wouldn't be a carryover if I purchased it in 1955.

I could have carried it into 1956 or I could not, I don't know.

2350 Q. Did you test the Gentry dehydrated garlic in 1955 in your products?

A. I can only answer that generally in saying that all finished products, as we consider them finished, are constantly checked, as you call it.

Q. Now what finished products of your use dehydrated garlic?

A. We use it in pork and beans, in catsup, tomato soup, and I think we use just a pinch of it in vegetable soup. I am not positive about that.

Q. Why were your purchases of dehydrated onion from Gentry in 1958 triple over that of 1957?

A. Because I was seeking an additional source of a product that would be acceptable to my finished product and I wanted to give the company sufficient business to keep him as a source of supply.

Q. Why did your purchases from Gentry in 1956—why were they almost half of what they were in 1955?

A. That likely would have been a carryover or short use of the products, or maybe I just wanted to give the business to Basic, I don't know.

Q. In 1952 did you have a broker in Chicago named Earl Roll?

A. Yes.

Q. Is he still your broker?

2351 A. Yes.

Q. In 1951 did you have a man working for you named Mr. T. N. Lyons?

A. Yes.

Q. What position did he hold?

A. He worked in the purchasing department. He worked some in production.

Q. Did he have anything to do with the purchasing of raw materials?

A. He had to do with the ordering of raw materials, yes.

Q. In 1951 who made the determination that the 275 pounds of Gentry dehydrated onion was satisfactory?

Mr. Rothe: Objection, your Honor. The witness hasn't testified that in 1951 anyone made a determination that 275 pounds was satisfactory.

Mr. Hays: I will rephrase the question.

By Mr. Hays:

Q. I assume from Respondent's Exhibit 190 that since you purchased 10,500 of dehydrated onion from Gentry in 1953, that the 275 pounds you purchased in 1951 was deemed satisfactory, is that correct?

A. That would be my assumption, yes.

Q. Now who made the determination that the 275
2352 pounds purchased from Gentry in 1951 was satisfactory?

A. Time and the lab.

Q. The name of the individual, please, if you know?

A. The name of the individual would be the gentlemen I gave you a while ago. It would be Kline or Hinds or a combination of three or four people in the laboratory who determine whether or not the sample had changed the flavor in any way of the finished product.

Q. Did you take any part in that determination?

A. What?

Q. Did you take any part in that determination?

A. I have no knowledge of whether I did or whether I didn't. I frequently do; in many of them that happen, I do not.

Q. What do you have to do with communications with your brokers which sell your products?

A. Direct communication with the brokers that sell our products, I have but little or no direct contact.

Q. Who is in charge of contacts with brokers in your company?

A. That would be done primarily through the sales department.

Q. And what is the name of the man in charge of that sales department?

A. His name is Paulson, P-a-u-l-s-o-n, and his
2353 assistant is Fields, F-i-e-l-d-s.

Q. Who handled that in 1951?

A. Who handled what?

Q. Who handled the communications with your selling brokers in 1951?

A. No one handled the communication between me and the—You mean who was in the sales department in 1951?

Q. And who handled the company's communications with its selling brokers?

A. I would say it would either have been Williams or Paulson. I don't recall the date Williams died.

Q. Had you heard of Gentry Onion prior to 1951?

A. I may have heard of it; I don't know. I couldn't answer that question.

Q. How much purchasing does Mrs. Eversole do today?

A. What?

Q. How much purchasing does Mrs. Eversole do today?

A. That would depend on your definition of purchasing. She might send out, for example, orders for 10,000 bags of beans today, but those are predetermined suppliers, and my interpretation is she sends the order instead of purchasing. I mean, there is a thin line maybe between the two, but there is a difference.

2354 Q. Does she have authority to select from whom she will order those beans from your approved suppliers?

A. Within limitations, the limitation being price, service, how many they got last week, and so forth.

Q. Well, she does have some discretion in the purchasing

of your products, is that correct?

A. In sending orders she has a limited amount of discretion.

Q. I take it you are the one that determines the approved source of supply?

A. That is generally true. I do not approve wrenches or screwdrivers or some little item they would use in the garage or in the factory, but the major items are the items that I consider important, and those I do approve.

Q. In 1958 was Puccinelli Packing Company on your approved source of supply for dehydrated onion?

A. They may have been.

Q. Is this approved source of supply written out somewhere?

A. Yes.

Q. Where is that?

A. In the order sending department, I would call it, or you would call it the purchasing department.

Q. And how far back do your records of approved 2355 sources of supply for dehydrated onion and garlic go?

A. Oh, probably a year. I don't know.

Q. Just a year?

A. They are put on the approved list until they are taken off and a new one is put on. I don't know how—

Q. Who is on the approved list for dehydrated onion today?

A. I would assume from this list that the three companies mentioned here are on the approved list.

Q. How could you assume that from this list?

A. Because I purchased from all three of them.

Q. Today? Recently?

A. In 1958, that is the year you are talking about.

Q. I mean now.

A. Well, '57—

Q. I mean now, this year?

A. At this moment I cannot answer your question.

Q. How long have you had an approved written source of supply for dehydrated onion and dehydrated garlic?

A. I would say the approved written source, as you word it, would have been made when onion and garlic powder was first used. I do not know the year in which it was first used.

Q. In your direct examination you gave as a reason for the up and down trend of your sales to Consolidated
2356 Foods and its affiliates the geographical location. Will you explain more fully just how geographical location affected the up and down trend of your sales to Consolidated Foods?

A. We, as all other canners in Indiana, and most of them, I think, in Illinois and Ohio, contract for acres of produce and not tonnage; therefore, it is possible that a farmer can yield double the tonnage off of an acre one year than he can another year.

Q. How does that affect your sales to Consolidated Foods?

A. There is no particular correlation between the two.

* * * *

2357 By Mr. Hays:

Q. If I understood your answer correctly, you said that you contracted for acres and not pounds, and that some acres yield more than other acres.

A. That is right.

Q. Now the connection in so far as how this acreage yield affects the up and down trend of your sales to Consolidated Foods is still to me somewhat obscure. Can you explain that more fully?

A. Well, that is probably simply answered by saying that if I have a large pack of tomato catsup, then I sell a larger quantity.

Q. Well, your large pack doesn't have anything to do

with geographical location, does it?

A. Oh, entirely. Indiana may have a good pack and Consolidated could buy all of their catsup, for example, from Ohio or New York State or California. They might not buy any from me because we wouldn't have the quantities available to sell and we might even choose to put the product in another form, the tomato in another form. It might look more profitable to us to make soup or tomato puree and not make as much catsup.

Q. In your direct examination, in explaining geo-
2358 graphical locations, you referred to the closeness of units. Now the closeness of what units to what?

A. I do not remember the particular question, but if you are referring to the closeness of Consolidated's distributing points, then naturally I, located in the center of Indiana, would have a better freight break, you might call it, compared with, say, a place in Columbus, Ohio, and than a packer would in Florida or New York State.

Q. How does that affect the up and down trend of your sales to Consolidated? These distribution points don't change any, do they, over the years?

A. I can't answer that. It is Consolidated's question whether the distribution points change or not, but in trying to be more explicit on my answer, if we pack a large quantity of catsup in our area, if we go, say, in a 500-mile radius, we might have the best catsup, the cheapest of anybody in the country. Next year it might be reversed. Before the season it might be reversed.

Does that answer your question?

Q. It is still not clear to me, but we will pass it.

A. Well, re-ask it and I will do my best to give you a good answer.

Q. All right. How can geographic location of Consoli-
dated's units which presumably are the same make
2359 for an up and down sales trend to Consolidated?

A. For example, if Consolidated had units in California, I wouldn't sell them any catsup.

Q. I am talking about trend. I don't mean to interrupt you, but you have a trend over the years up and down.

A. That is the history of the canning business.

Q. All right. Now how does the closeness of units contribute to that trend?

A. The closeness of the unit naturally helps me on a lesser freight rate, the same way I could sell A. & P. something in Louisville, Kentucky, which is only 35 miles away when I couldn't sell A. & P. anything in New York City, because in Louisville he would have a 10 cents a hundred freight rate and in New York City he would probably have a dollar and five or ten cents which might mean 15 or 20 cents a dozen difference on the finished product.

Q. All right. Assume that to be true, and the next year the freight rate is the same and the location is the same and you don't sell as much to Consolidated Foods. What does the location have to do with that circumstance?

A. Maybe Consolidated just didn't want to buy from them, I don't know. There is a dozen hypothetical
2360 answers I could give you, but I think they would be only conversation.

Q. In other words, there are other factors that account for this up and down sales trend to Consolidated Foods?

A. Oh, yes.

Q. What are the other factors?

A. Whether Consolidated wanted to buy from me or not; whether I wanted to sell to Consolidated; whether or not I had a large or a small supply of the particular item you might be discussing; and sometimes it is just the way I feel that morning, whether I sell any or whether I won't.

Q. Has there ever been a morning when you just didn't feel like selling?

A. Yes, many times.

Q. To Consolidated Foods?

A. Sure.

Q. You refused to sell them?

A. The word "refused" isn't appropriate.

Q. You just didn't try to sell them that day?

A. I assume that my brokers try to sell them frequently, but that doesn't necessarily mean that I confirm the broker's orders.

Q. There are some orders you did not confirm?

2361 A. Oh, many.

Q. Why not?

A. Price, our supply, our present backlog of orders; a number of reasons.

Q. Where there times when you had an oversupply?

A. Yes.

Q. Did you decline to confirm orders when you had an oversupply?

A. I am not as inclined to decline orders when I have an oversupply as I am when I have an undersupply.

Q. In connection with your purchases of dehydrated onion from Gentry, to paraphrase your testimony, I believe you stated you had to make enough purchases to keep them satisfied?

A. That is generally right, after we have decided that the product is acceptable.

Q. Am I correct in assuming that Consolidated Foods wanted to keep you satisfied by purchasing a certain amount from you?

Mr. Walker: Objection, your Honor. This witness couldn't possibly know what Consolidated Foods wanted or didn't want.

Mr. Hays: I withdraw the question.

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2362 Hearing Examiner Kolb: During this period from 1953 to 1958, what other suppliers of onion and garlic,

dehydrated onion and garlic, were there besides Gentry, Basic and Puccinelli?

The Witness: Well, you have Puccinelli, or however you pronounce that, and then you likely had another one or two. I do not know.

Hearing Examiner Kolb: You don't recall the names of them?

The Witness: No.

Hearing Examiner Kolb: Do you consider Simplot as one of those?

The Witness: Who?

Hearing Examiner Kolb: Simplot, S-i-m-p-l-o-t.

2363 The Witness: I don't think they are on my list or that I have ever heard of them.

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Redirect Examination

By Mr. Walker:

Q. Mr. Morgan, you did ask your accounting department to prepare the statistics which would show your purchases of dehydrated onion and garlic from all sources back as far as you had these records, that is, to 1954, didn't you?

A. Yes.

Q. So that presumably the accounting department in giving the information that we have on that exhibit there has listed all of the sources that they could find from the records, isn't that right?

A. I would assume this is correct.

Mr. Walker: We have the original form that the accounting department prepared, your Honor, and of course it shows just the data that is on there and lists no other sources.

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2365 Mr. Walker: Your Honor, we thought we might first, if it is agreeable with Mr. Hays, get out of the way the problems we have in connection with the exhibits.

First, before we discuss it, it might be best to place it actually in evidence, or have it marked as an exhibit, if it is agreeable with you, Mr. Hays. It is the major customer list that we will take up first.

I will ask that it be marked Respondent's Exhibit 191-A to 191-M for identification.

(The paper referred to was marked Respondent's Exhibit 191-A to 191-M for identification.)

Mr. Walker: Your Honor, this exhibit is a list of all companies which purchased at least 10,000 pounds of dehydrated onion or garlic or both from Gentry in any single year from 1946 through 1958, showing which companies sold products to Consolidated Foods Corporation during the period January 1, 1950, to December 31, 1958.

The information as to whether or not these com-
2366 panies were suppliers to Consolidated was obtained by us from each of the Consolidated units, and this is the area we discussed at the time of the hearing in Washington. Mr. Hays and I have discussed this, and with your permission, Mr. Hays, I will state for the record the stipulation we have achieved.

According to the purchasing records of each of the Consolidated units, the companies identified in this list as being non-suppliers to Consolidated Foods Corporation have sold nothing to Consolidated Foods during the period indicated. These records generally go back for a period of about five years.

If persons knowledgeable as to purchasing activities in each of the Consolidated units were called as witnesses, they would testify that based on their knowledge and experience none of the companies identified on the list as being non-suppliers of Consolidated Foods Corporation sold any products to Consolidated during the period indicated.

Of course, as to the companies that are identified as Consolidated suppliers, it is stipulated that the records or the testimony would be that they have sold products to Con-

solidated some time during the period indicated.

It is not our intention to argue that identification of
2367 these companies as non-suppliers establishes affirmative avoidance of reciprocity, and respondent would not so argue. Rather, respondent will argue only that the sales of dehydrated onion and garlic by Gentry to the companies identified as non-suppliers could not have resulted from reciprocity, either because the companies made products that could have been sold to Consolidated but were not, or because the companies made no products that could have been sold to Consolidated. Each of those things is true as to some of these companies.

Have I stated it accurately, Mr. Hays?

Mr. Hays: Yes, except that I wish you would bring out that in determining whether any of the customers fall within the 10,000 pound or above category, that the poundage of all of a particular concern's subsidiaries, corporations, branches or affiliates are included in the named company on your list.

Mr. Walker: That is correct, whether the sales are of an affiliate, a subsidiary or a branch of the Gentry Company, the sales to that company were attributable to the total for that particular company.

Mr. Hays: Your Honor, we will so stipulate.

2368 I would like to add that in so far as the customers marked "No" are concerned, that I went to the officers of the River Grove branch of the Consolidated Foods Corporation, and in order for me to check whether the "No" was correct, it would have been necessary for me to review every invoice there, because I would be attempting to prove a negative. Consequently, we intend at the present time, at least, to contact these concerns on Respondent's Exhibit 191-A through 191-M for identification, and in the event we develop information contrary to the stipulation, then it is my understanding that Mr. Walker will be willing to waive formal proof of these matters and let them become a part of the record in the same informal way

we have permitted this information to become a part of the record.

Is that agreeable, Mr. Walker?

Mr. Walker: That is agreeable.

Hearing Examiner Kolb: You have no objection to this going into evidence now?

Mr. Hays: No, your Honor.

Hearing Examiner Kolb: The document marked Respondent's Exhibit 191-A through 191-M for identification is received in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 191-A through 191-M, was received in evidence.)

2369 Mr. Walker: Next, your Honor, I would like to have marked for identification Respondent's Exhibit 192.

(Said document was marked Respondent's Exhibit No. 192 for identification.)

Mr. Walker: I would like to place in evidence Respondent's Exhibit 192, a document which shows the IBM customer type code numbers. You will remember, your Honor, that we identified each one of the Gentry customers at the time of the preparation of the sales records falling into whatever classification they did, and those classifications on the sales record books were in letters.

When the information was tabulated on the IBM cards, it was necessary to change to numbers, and these are the numbers which describe the classifications on the IBM.

Mr. Hays: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit 192.

(Said document, heretofore marked Respondent's Exhibit No. 192 for identification, was received in evidence.)

Mr. Walker: Next, your Honor, I would like to take 2370 up Exhibits Nos. 163 to 171. These are the exhibits

identified and described by Mr. Warnecke in San Francisco.

This is, to put it simply, the market share data.

At that time the admissibility of the admission of these exhibits was postponed pending the right of counsel supporting the complaint to check the underlying data, and I understand that study has been made.

Mr. Hays: No objection, and no cross examination.

Hearing Examiner Kolb: The documents marked Respondent's Exhibit 163 through 171 are received in evidence.

(Said documents, heretofore marked Respondent's Exhibits Nos. 163 through 171, both inclusive, for identification were received in evidence.)

Mr. Walker: Shall we turn next, Mr. Hays, to Respondent's Exhibits 154 to 157? These are the sales records books, your Honor, the very large and voluminous books which contain a detailed statement of the sales of dehydrated onion and garlic and capsicums to each of Gentry's customers in the years 1946 to 1958.

These record books were received in evidence at the time of the Los Angeles hearing, subject, again, to the
2371 right of counsel supporting the complaint to check the underlying data, and I believe that that also has been done.

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2375 Hearing Examiner Kolb: There being no objection, the following documents will be received in evidence: Commission's Exhibit 227, and Respondent's Exhibits 193-A through -I, 194-A through -Z5, and 195-A through -Z8.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 227 for identification, was received in evidence.)

(Whereupon, the documents referred to, heretofore marked Respondent's Exhibits 193-A through I, 194-A

through -Z5 and 195-A through -Z8, were received in evidence.)

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2377 Mr. Walker: Mr. Hays, I believe you had a statement you wished to make for the record regarding Respondent's Exhibit 160-A and -B.

Mr. Hays: Yes. With reference to Respondent's Exhibit 160-A and -B, which were obtained by the respondent by requesting the documents or information from Basic, I have been informed that the dates appearing thereon indicate the date of the first billing by the warehouse to Basic. In other words, you would assume that the warehouse would have been opened one month prior to the date appearing on Respondent's Exhibit 160-A and -B.

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2378 WILLIAM H. WHITE, was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name for the record?

A. William H. White.

Q. Where do you live, Mr. White?

A. 249 Parkway, Harrington Park, New Jersey.

Q. What is your occupation, sir?

A. I am sales representative for Gentry Division of Consolidated Foods.

Q. How long have you been a sales representative for Gentry?

A. Since 1955.

Q. You are employed and paid by Gentry, is that right?

A. That is correct.

2379 Q. In what areas have you worked as sales representative for Gentry since 1955, Mr. White?

A. In the New England States primarily, and also in the southeast section of this country.

Q. Have you ever worked as sales representative for Gentry in the Midwest?

A. For a period of one week only, and I would think of that as a training period when I joined the firm.

Q. That is when you first started working for Gentry?

A. That is correct.

Q. Where did you work before you started to work for Gentry?

A. I was with a chemical research corporation as salesman for about six months.

Q. Where was that company located, Mr. White?

A. Bridgeport, Connecticut.

Q. What did you do before that?

A. I was a salesman with Basic Vegetable Products Company.

Q. During what period of time did you work as a salesman for Basic Vegetable Products, Inc.?

A. From 1948 to 1954.

Q. What area did you cover as salesman for Basic?

A. The middlewestern area, principally Ohio, 2380 Michigan and Illinois.

Q. Who was your immediate superior?

A. Mr. James Benzies, B-e-n-z-i-e-s.

Q. What was his position, Mr. White?

A. Sales manager, midwestern sales manager.

Q. He was the midwestern sales manager?

A. That is right.

Q. During that period of time, that is, during the period of time you were working as a salesman for Basic, who was the executive at Basic in charge of the sales area of the business?

A. Mr. William Hume.

Q. What was Mr. Sparling's position during this period?

A. Mr. Sparling carried the title of sales manager; however, decisions were made by Mr. William Hume.

Q. Is your statement based, of course, on your experience in the field; is that right?

A. That is correct.

Q. And only on that, is that right?

A. That is correct.

Q. What contacts did you have with Mr. William Hume while you were working for Basic?

A. Personal contact was somewhat limited; however, I did have frequent correspondence with him.

2381 Q. Why did you leave Basic, Mr. White?

A. I think I could put it fairly by saying this was a mutual arrangement. To carry it a little further, I was unhappy with the settlement of commissions and other things. I felt that it didn't show a good plan or pattern for my future, and I expressed myself rather strongly on those matters.

Q. Was that expression the occasion for your leaving Basic?

A. No, I was with them for about three or four months after that.

Q. Why did you finally decide to leave?

A. Well, it looked like, to me, at that time that there wasn't much to be gained, there wasn't a good future there for me.

2382 Q. While you were salesman for Basic, Mr. White, did you ever have any conversation with your superiors about obtaining business from companies that were competitors of Consolidated Foods Corporation after Consolidated Foods Corporation acquired Gentry in 1951?

A. Would you restate that, please?

Mr. Walker: Would the reporter please read the question?

(The question was read by the reporter as follows:

"While you were salesman for Basic, Mr. White, did you ever have any conversation with your superiors about obtaining business from companies that were competitors of Consolidated Foods Corporation after Consolidated Foods Corporation acquired Gentry in 1951?")

By the Witness:

A. Yes.

Q. With whom did you have that conversation?

A. With Jim Benzies.

Q. He was midwestern sales manager, you testified?

A. Yes.

Q. When did the conversations take place, Mr. White?

A. At about time Gentry became a part of Consolidated Foods.

2383 Q. After you learned of the acquisition?

A. Yes.

Q. What was said on that occasion?

A. Well, we met to see what effect this would have on our business, that is, Basic's business and ours in particular, in our office.

We reviewed accounts to see where we might gain because of this change. This is particularly true of the wholesale grocery operation, we felt it would be competitors of Gentry's, and therefore open to purchase more from Basic, or to purchase from Basic if they had not purchased from them before.

Q. Did you have occasion to call on Wass Food Products when you were working as salesman for Basic, Mr. White?

A. Yes.

Q. How frequently did you call on them?

A. I saw them, I believe, from 1948 on through 1954. I

saw them very frequently, at some times three to four times a month.

Q. Did there come a time, Mr. White, during this period when Wass decreased purchases of dehydrated onion and garlic from Basic?

A. Yes.

Q. When was that?

A. 1954, approximately.

2384 Q. Did you continue to call on Wass thereafter?

A. Yes, I did.

Q. Was any explanation given to you by the officials at Wass for the decrease in purchases from Basic?

A. Yes.

Q. What was that explanation, sir?

A. Well, Mr. Max Slater, S-l-a-t-e-r—can I go into a bit of detail here, if I may?

This is a firm that I had been nursing along, and it was a firm that had given us some problems in collection in the past, but I had found a successful pattern of selling and collecting.

However, there came a day when Mr. Slater called the Basic office in Chicago, I believe he wanted to pick up a case of onion, or a case of garlic, whatever it was, a small purchase—and he was handled in such a manner that he felt it was an affront or an insult, and he became very heated about this.

I contacted him personally as soon as I heard of the incident, and I was very much aware of his feelings on the matter. The substance of the conversation was that we would certainly get no more business from him.

Q. What was the affront or insult, Mr. White?

A. I don't know the exact words, but he was asked to pay his bills in such a manner that he felt he was be-

2385 ing called a deadbeat or some similar derogatory term.

Q. I now show you Respondent's Exhibits 98 and 99.

Respondent's Exhibit 98 is a report dated October 7, 1953, written by Mr. Benzies of Basic Vegetable Products, Inc.; and Respondent's Exhibit 99 is a call report dated August 15, 1954, written by Wachholz of Basic Vegetable Products, Inc.

I will ask you to examine these two call reports, Mr. White, and state whether the references in them to the credit difficulties is the area about which you have been testifying?

A. Yes.

Q. Now, Mr. White, I would like to show you another document. This is Commission's Exhibit 158. This document purports to be a car [sic] report written on June 2, 1954, to the Basic Vegetable Products, Inc. It contains the initials "B. W."

Is that you, Mr. White?

A. Yes, that would be me.

Q. Did you write this call report?

Mr. Hays: Did you answer?

By the Witness:

A. No, I didn't answer.

Yes, I did write this call report.

By Mr. Walker:

2386 Q. Now, Mr. White, directing your attention to the first sentence, the first sentence of the text, if I may call it that at the bottom, it states:

"Gentry has worked the reciprocity angle to the hilt here, and Consolidated takes so much of Wass' production, that it has been very effective."

On what, Mr. White, in view of your prior testimony, did you base that statement?

A. I would say it is mostly conjecture.

Q. Had anyone at Wass Food Products told you—strike that.

Did you know, Mr. White, that Consolidated Foods was a customer of Wass Food Products?

A. Yes, I did.

Q. What factors did you take into account in making the conjecture, as you have called it?

A. Let me say this: My relationship with Max Slater of Wass Foods was a very good one. I often had, or generally had free run of his plant. I am quite sure during that period of time I would well have seen any private label merchandise being packed in his plant.

If it were Monarch label, for instance, I would well know where that came from and where it was going.

I am not sure whether Max Slater had mentioned
2387 this to me at all, that he was doing business with Monarch, or a Division of Consolidated Foods. He may well have done so.

But in any event, I would have gained that information in one way or the other.

I am also well aware, or I was well aware at that time that Gentry was making a decided effort to get business from Wass Food Products. I am not sure if that is information given to me personally by Max Slater or not, but I very often did observe samples submitted by Gentry, price lists, and other material indicating they were making a decided effort to get business there.

Q. Well, Mr. White, did anyone at Wass tell you they were buying from Gentry because Consolidated was a customer of Wass?

A. No one has ever mentioned that to me, no.

Q. Did anyone at Wass tell you that reciprocity was used—that is the word you used in your call report—by Gentry or Consolidated Foods Corporation?

A. No.

Q. Why, then, Mr. White, did you write this call report?

A. Let me relate this, if I may.

After my visit with Mr. Slater, shortly after this
2388 incident, this credit incident that I mentioned, I re-

turned to the Chicago office of Basic and talked with Mr. Jim Benzies about it.

This would have been before the report. He either suggested, or we concluded mutually, or perhaps even I arrived at this myself, that I shouldn't get involved in the personalities of this matter.

It would reflect on the young lady in the office, there would have been personal comment about Mr. Max Slater, and it seemed a logical way to explain the loss of business.

Q. Mr. White, did you ever call on the John Sexton & Company in Chicago while you were working for Basic?

A. Yes, I did.

Q. When was that, sir?

A. Between the years, again, 1948 and 1954.

2389 Q. Did there come a time when anyone at the Sexton Company discussed Consolidated Foods Corporation with you?

A. Yes.

Q. Who was that, sir?

A. Mr. Tom Sexton, and his assistant, Mr. Vansanno.

Q. When did the conversation take place, sir?

A. About 1951.

Q. What did they say to you about Consolidated Foods Corporation?

A. Mr. Vansanno indicated to me, and later Mr. Sexton, that they had good news for me, that because they were now going to stop purchasing from Gentry, I could look forward to doing business with them.

Q. That is you as a Basic representative?

A. As a Basic representative, yes.

Q. Did they say why they were doing this?

A. Yes. Mr. Vansanno indicated, Sam Vansanno indicated that they felt Gentry was a competitor of theirs. I assume that he meant Consolidated Foods as a competitor of theirs, taking it as a whole; and Mr. Sexton made a state-

ment that was similar to that. I don't recall the exact words.

Q. What business is the John Sexton business engaged in?

2390 A. Wholesale grocery business.

Q. From what companies did the Sexton Company purchase dehydrated onion and garlic after these conversations you described?

A. We did get the business, we, meaning Basic; and also some went to Puccinelli Packing Company.

Q. What States have you covered as a salesman in the eastern part of the United States for Gentry, Mr. White?

A. All of the New England States; New York State; New Jersey; North Carolina; South Carolina; Virginia; West Virginia; Pennsylvania, and part of Ohio and Maryland.

Q. Did you say Maryland?

A. Yes, and also Delaware.

Q. When did you start working in the Ohio territory for Gentry?

A. For Gentry, in 19— the latter part of 1957 or '58. I am not sure of the exact date.

Q. Since you have worked for Gentry, have you called on Fred W. Albrecht Grocery Company in Ohio?

A. Yes.

Q. In what business are they engaged?

A. Wholesale grocery.

Q. Did anybody at the Albrecht Company discuss

2391 Consolidated Foods with you?

A. Yes.

Q. Who at that company discussed the Consolidated Foods Company with you?

A. The purchasing agent, whose name is McDermott.

Q. When did that conversation take place?

A. That would have been the time of my first call there,

which was either the latter part of 1957 or 1958. I am not sure which.

Q. What did he say to you on that occasion, sir?

A. He advised me they were not buying from Gentry because they felt Gentry was a firm competitive to them. He advised me somewhere in the conversation that they were now handling institutional packs of onion from the H. J. Heinz Company. I am not sure that he bought completely from Heinz or not. There may have been a sale, one or two sales of Gentry, but we had lost business, definitely.

Q. This reference to the time, prior to the time that you first called on the company, was when you had the loss of business?

A. That is correct.

Q. Have you had occasion to call on the Embassy Wholesale Grocery in New York City?

A. Yes.

2392 Q. Are they in business in any other cities?

A. Yes, they also operate in Baltimore and Washington, D.C., in that area.

Q. In what business are they engaged?

A. They are also wholesale grocers.

Q. Did anyone at Embassy discuss the Consolidated Foods Corporation with you?

A. Yes.

Q. Who was that?

A. A Mr. Tameroff, who is their sales manager, and also, I would say, either directors or has a part in directing the sales policy, or purchasing policy.

Q. When was that?

A. That would have been in, I believe, 1959; possibly 1958.

Q. What did he say to you on that occasion?

A. On several occasions, Mr. Tameroff stated that he didn't know why he was buying from a competitor. He also

stated that a number of his salesmen were complaining that they were handling a product manufactured by a division of their principal competitor. I don't know if I am making that clear or not.

There are divisions of Consolidated Foods operating in the wholesale grocery field in the Washington and
2393 Baltimore area where Embassy also operates, so the Embassy men felt it was a disadvantage in handling this product.

Q. Would you please describe, Mr. White, the distribution of Basic's products by the H. J. Heinz Company at the time that you were working for Basic?

A. Heinz is the principal distributor of Basic's institutional packs of dehydrated onion. When I say principal, I mean, perhaps—well, a guess would be that they sell 90 to 98 percent of the total pack, institutional pack put out by Basic Vegetable Products Company.

Q. To what types of users does H. J. Heinz sell Basic onion?

A. At that time to institutional users, and in some cases, to food processors or manufacturers.

Q. Mr. White, after you started working for Gentry, did there come a time when you called on the Michigan Mushroom Company?

A. Yes.

Q. When was that?

A. That was in 1955.

Q. This was in that first training week you had when you first went to work for Gentry?

A. That is correct.

2394 Q. Did anyone else from Gentry Company accompany you on that call?

A. Yes, Martin Kraham.

Q. He was also a Gentry salesman?

A. That is right.

Q. And you called on Michigan Mushroom as a salesman for Basic?

A. Yes.

Q. Whom did you call on at the Michigan Mushroom Company when you were at Basic?

A. Robert Herrick.

Q. What were Herrick's duties with relation to purchasing?

A. He directed it.

Q. How well did you know Mr. Herrick at that time, Mr. White?

A. I knew Bob Herrick quite well, both as a business acquaintance, and also socially.

Q. Now, directing your attention to the occasion when you met with Mr. Herrick and Mr. Kraham, would you please state the substance of the conversation that occurred at that time?

A. Yes, in substance, Mr. Kraham rather baldly stated, I felt, that Consolidated Foods was buying from Michigan Mushroom, and therefore certainly Michigan Mush-
2395 room should buy from Gentry.

Q. What did Mr. Herrick respond to that statement?

A. He made no comment at the time.

Q. Did you ever discuss this subject with Mr. Herrick without Mr. Kraham's presence?

A. Yes, I did.

Q. When was that?

A. This was on the same visit. Mr. Herrick took me aside and indicated to me that he certainly didn't appreciate this approach to business, and if anything, he would be inclined to not buy from Gentry because of this type of approach.

Q. Mr. White, Mr. Sparling of Basic Vegetable Products testified in his opinion Basic lost sales with Wass

Food Products because of the Gentry-Consolidated relationship. Do you agree with that statement?

A. No, I do not.

Q. On what do you base your disagreement?

A. I very strongly believe that the reason Basic lost business at Wass Foods goes directly back to the credit incident I mentioned earlier. This wasn't one incident, I might mention, because Mr. Slater continued to mention this incident on many, many subsequent calls.

Q. Mr. White, approximately how many food companies have you called on in an effort to sell dehydrated
2396 onion and garlic, either for Basic or Gentry, since 1951?

A. I would say, I would estimate between four and five thousand.

Q. Would you please describe what you do in general as a salesman for these products?

This is dehydrated onion and garlic, what you do when you call on a company?

A. Well, it would depend very much on the company. Invariably, there is contact with the purchasing agent to apprise him of new products, changes in packs, prices; however, the important part, I feel, of our work is contacting the production people.

This may be a sausage maker in some cases, and it may be a food technologist; it may be a chemist, but working with them in developing new formulations and acquainting them with partical [sic] sizes, information, product information; and in particular, being sure that we are included in formulations of new products.

This is pretty important, because if you are not in the original formulation, it is hard to bring about a change at a later date.

Q. Mr. White, have you ever mentioned Gentry's re-

lationship with Consolidated Foods in an effort to help sell Gentry products to any company?

2397 A. No, I haven't.

Q. Have you ever mentioned Consolidated to any of your customers or prospects?

A. Have I ever mentioned Consolidated?

Q. Yes, to any of your customers or prospects?

A. Not other than perhaps by way of an introduction, that it is Gentry, Division of Consolidated Foods, if that is mentioned.

Q. Based on your experience, Mr. White, as a salesman for Basic, during the period 1951 to 1954, did the ownership and operation of Gentry by Consolidated Corporation, Consolidated Foods Corporation adversely affect your ability to sell Basic's dehydrated onion and garlic products?

A. No.

Q. What in your opinion, Mr. White, are the important factors governing your ability to sell dehydrated onion and garlic?

A. Those that I mentioned before, that is, the contact with production people, and certainly price, quality, delivery, service; and I think that loyalty and personal relationship is also important.

Q. What do you mean by loyalty and personal relationship, Mr. White?

A. Well, to restate it, if you don't find yourself
2398 included in original formulations, it is then very hard to bring about a change in a source of supply.

If formulations call for "X" brand of onion powder, and this product is being manufactured successfully, as a salesman you meet a difficult situation. I think also that it is quite fair to say that once established as a source, the tendency is for the user or manufacturer to continue with that source.

Q. Did you, Mr. White, while working for Basic ever

receive any letters from your superiors relating to the so-called practice of reciprocity?

A. Yes, I did.

Q. What was that letter, sir?

A. I received a letter from Mr. Jack Hume, as did other Basic salesmen incidentally, asking that we take note of, watch for, and report any incidents which would show Gentry representatives obtaining business by reciprocity.

Q. When was that letter written, sir?

A. About 1953, I believe.

Q. Mr. White, is there any occasion where, to your knowledge, you as a salesman for Gentry have been able to sell any of Gentry's products because of the fact that Gentry is a part of Consolidated?

A. No, with the exception of Monarch Division of
2399 Consolidated Foods.

Q. Has anyone at any company you have called on during the period of time you have been a salesman for Gentry ever said to you that they buy from Gentry because it is a part of Consolidated?

A. No.

* * *

2401 *Cross Examination*

By Mr. Hays:

Q. Mr. White, do you understand that you are still under oath for my questions as well?

A. Yes, sir.

Q. When were you first employed by Basic Vegetable Products Company?

A. 1948.

2402 Q. And what was your job when you were hired in 1948?

A. As a trainee in selling.

Q. Had you ever sold dehydrated onion or garlic before 1948?

A. Prior to 1948?

Q. Yes.

A. No, I had not.

Q. Have you ever sold anything prior to 1948?

A. Yes, I had.

Q. What type of sales activity were you engaged in prior to 1948?

A. Marking devices, dies, stampings, articles of that nature.

Q. Why did you decide to become a dehydrated onion and garlic salesman?

A. Principally to better myself. It looked like a very good field. I had noticed the products when I was in service.

2403 Q. How did you happen to become hired by Basic? Did you go to them and ask them for a job?

A. No, I did not. They advertised and I answered the ad.

Q. Who did you talk to when you answered that ad?

A. Mr. Jim Benzies.

Q. Where did you answer that ad, here in Chicago?

A. Yes, that is correct.

Q. Did you talk with anybody about—did you talk with anybody at Basic before you were hired?

A. Yes.

Q. Who did you talk to?

A. Mr. William Hume.

Q. Was he here in Chicago?

A. Yes.

Q. He interviewed you?

A. That is correct.

Q. Did you talk with anyone else?

A. No.

Q. How long after you were interviewed by Mr. Hume were you hired?

A. To the best of my recollection within a few days.

Q. Then what happened? Did you undergo a training period?

A. Yes.

2404 Q. And what did that consist of?

A. It consisted principally of Mr. Benzies telling me what the various items were, what their application might be, and in taking me to visit some accounts with him as an observer.

Q. Were these accounts that Mr. Benzies sold to?

A. Yes.

Q. How long did that training take?

A. That particular phase of it probably took two or three days.

Q. Where did that take place?

A. In Chicago.

Q. Then what happened?

A. Then I was given a list of accounts and went on my own.

Q. Where were these accounts located?

A. Chicago.

Let me take that back. Let me amend that to be Chicago and vicinity.

Q. This was your sales area for how long?

A. The actual time element is not clear to me, but I believe that within a month, if not a month within two months that I took trip covering areas outside of Chicago.

Q. You sold in the Chicago area for about a month?

2405 A. A month to two months.

Q. Then you took a trip outside the area to another area?

A. That is right.

Q. Where did you go then?

A. I don't recall where that first trip was, but I can

confine it to having been either Ohio or Michigan.

Q. Then did you come back to the Chicago area?

A. That is correct.

Q. How long did you sell in the Chicago area?

A. You see this was a part of the schedule, that is, to work in the Chicago area for perhaps two weeks and to travel for two weeks with variation.

Q. And did you travel to the same areas?

A. Yes.

Q. In other words, it was Chicago two weeks and either Ohio or Michigan for two weeks?

A. Yes.

Q. And back to Chicago and then back to Ohio or Michigan?

A. That is correct.

Q. How long did this keep up?

A. For as long as I worked for Basic.

Q. For how long was that?

2406 A. Again the latter part of 1948 to 1954.

Q. Now when you first went with Mr. Benzies to call on these accounts with him, did you subsequently call on those accounts by yourself afterward?

A. It is pretty hard to define. Some I may have and some assuredly I didn't.

Q. Now the list of accounts that were given you, were those accounts that had previously bought dehydrated onion and garlic from Basic?

A. In some cases, yes, and in most cases, no.

2407 Q. When was your first contact with Wass Food Products?

A. I don't believe I can fix a specific date.

Q. Did you contact Wass Food Products in 1948?

A. I don't know.

Q. Did you contact them in 1949?

A. Yes, I believe so.

Q. Did you sell them anything in 1949?

A. Again that would be hard to define. I don't know.

Q. Did you contact them in 1950?

A. To the best of my recollection, yes.

Q. Did you sell them in 1950?

A. 1950, I believe so, yes.

Q. Was Wass Food Products one of those accounts which were given to you as already buying from Basic or was it an account that you developed?

A. I would say both. It was an account that had purchased something from Basic in the period prior to that. I believe during the time in which I handled the account, they bought more.

So to answer your question, I developed it.

Q. Now when did this circumstance occur when Mr. Slater of Wass Foods was very angry?

A. What time?

Q. When?

2408 A. When?

Q. Yes.

A. I believe that to be in 1953.

Q. Do you know when in 1953?

A. As to month?

Q. Yes.

A. No.

Q. Did you prior to 1953 handle the collection of Wass Food Products' account?

A. Yes.

Q. Who did you transact that business with?

A. With Mr. Max Slater.

Q. Did you collect from all your accounts? Was that a part of your normal business?

A. In the cases where it was warranted, yes.

Q. What do you mean by the cases where it was warranted?

A. If an account was on the basis of paying regularly, the check would be mailed in, and there was no purpose for me to collect.

This was not a regular function of my job as a salesman.

Q. In other words, you just collected delinquent accounts, is that it?

A. If there were accounts that were behind, yes.

2409 Q. And Wass Food Products was always behind, wasn't it?

A. I believe there is a record of slow payment with Wass Food Products, yes.

Q. Despite the fact that there were—despite the fact that they were usually slow, they were usually slow in payment, you continued to sell them more and more during the period from 1950 to 1953?

A. That is correct.

Q. During your time in Chicago were you familiar with the salesmen of your competitors?

A. Well—

Q. In the Chicago area?

A. During the time I was in Chicago?

Q. Yes.

A. Yes, to some degree.

Was your word "familiar," sir?

Q. Yes, sir.

Did you know who they were?

A. In some instances, yes. A few of them I did meet at conventions or as I might be calling on the trade at the same time they were.

2410 Q. All right. Who was calling on the trade in the Chicago area from 1948 until 1954 that represented Gentry or the Gentry Division of Consolidated Foods?

A. From 1948?

Q. From 1948 to 1954.

A. There was a Charles Strecker, I believe. I am not sure of the spelling; Martin Kraham, K-r-a-h-a-m; Frank Fahrenkamp. That is all I recall at the moment. There were some others.

Q. Who were your other competitors in the Chicago area during the period from 1948 to 1954?

A. Puccinelli Packing.

Q. Who represented them in the Chicago area?

A. Fahrenkamp.

Q. He is a broker, isn't he?

A. That is correct, or was.

Q. Did you have any other competitors in this area during that time?

A. There was some sales made by Simplot in the area. Excuse me, is this 1948?

Q. 1948 to 1954.

A. There were some sales made by Simplot during that time, Puccinelli, Gentry, and some small amount of foreign merchandise was brought in.

Q. Who was the salesman for Simplot in the Chi-
2411 cago area during that period?

A. To the best of my knowledge Simplot sold through brokers at that time. It wasn't a direct salesman there with whom I was familiar.

Q. When did you first meet Mr. Martin Kraham?

A. Again that is rather hard to fix. I would guess it to be between '52 and '54.

Q. How did you happen to meet him?

A. I believe that occurred when we were both calling on an account at the same time by coincidence.

2412 Q. Which account did that occur at during that period 1952 to 1954?

A. When I first met him?

Q. Yes.

A. I don't know. I would be hard put to fix that.

Q. Were those the only circumstances under which you met Mr. Kraham during the period 1952 to 1954, that is, when you ran into him when you were both calling upon the same account?

A. Yes.

Q. Did you ever have lunch with him?

A. No.

Q. You were not friendly with him on a social basis?

A. No.

Q. Were you on a first-name basis with him?

A. No. I would define it more as a speaking acquaintance. "How are you." "Good-bye."

Q. During the period 1948 to 1954, how many times did you call upon Mr. Slater to attempt to get Wass Food Products to pay up on delinquent accounts?

A. Are you defining that as calls made only to get him to pay up on delinquent accounts or—

Q. No, I am not limiting it to that. I want to know how many times you talked to him about paying up during
2413 that period. I don't care whether you called to sell him some goods, too, but if you talked to him about paying up, I want to know. I count that as one time and I want to know how many times.

A. The best answer I could give you on that is that at least during certain periods I called on him to my recollection two or three times per month.

Q. Did he ever get angry at you?

A. No.

Q. He never did?

A. He did not.

Q. Didn't he indicate he resented your calling upon him?

A. No, he did not.

Q. Now describe with particularity this instance where he was very angry? When did that happen?

A. Again approximately 1953.

On this occasion he called Basic's Chicago office.

Q. Were you there when he called that office?

A. No, I was not there when he called the office.

Q. How do you know he called the office?

A. This was reported to me later.

Q. By whom?

A. By the secretary.

Q. Mr. Slater?

2414 A. Our secretary.

Q. Oh.

A. She related the incident to me.

Q. What was the incident?

A. That Mr. Slater had called; he wished to buy a case or two cases, what would be a small quantity for him of, I believe, garlic powder. As she was relating it to me at the time, she said, "I asked him about payment. He became very upset and hung up. You had better get in touch with him."

Q. What was this secretary's name?

A. Mrs. Betty Monaghan.

Q. Where does she work, in the Chicago branch of Basic?

A. Yes.

Q. Did Mr. Slater tell you about this incident?

A. He most certainly did.

Q. When was that?

A. I contacted him quite possibly that same day or, if not then, very quickly, very likely the next day.

Q. Where did you make this contact?

A. At his place of business.

Q. Where was that at that time?

A. I believe the address to have been 1042 Ran-
2415 dolph Street, but I am not positive.

Q. What did he say to you?

A. He greeted me by saying he certainly wasn't going to buy any more Basic onion or garlic.

Q. What did you say?

A. I asked him why. He said he did not have to take

that kind of treatment or insults that had been given to him when he called our office.

Q. What did you say?

A. He went on in great detail. I am not attempting to quote the exact words, but certainly the substance is that he was greatly antagonistic, greatly antagonized, very provoked.

Q. Did he tell you why he was antagonized or provoked specifically or how he was insulted?

A. Yes. Again he said he did not have to take that kind of treatment, meaning, I presume, there had been a very, very tactless reference to his not paying his bill.

Q. That is what you presumed it to mean, is that right? You don't know what he meant by that, do you?

A. I know what he meant when he said he was insulted.

Q. What did he mean?

A. He meant that the pattern of business that he
2416 and I had worked out on a very pleasant and workable arrangement was disrupted; that he wasn't going to buy from Basic. He certainly indicated that his feelings were hurt in a decided manner.

Q. Did he offer to pay up his delinquency at that time?

A. I don't recall.

Q. What did you say?

A. In so many words I attempted to appease the man, tell him not to take it that seriously.

Q. Is that all that occurred at that time at that meeting?

A. Do you mean is this conversation all? Was this the total conversation, all that occurred at that meeting?

Yes, sir, as I recall it.

2417 Q. Did you ever call upon him again?

A. Yes, I did.

Q. Did you ever sell him anything?

A. I think I may have obtained one or two orders at a later date. I am not positive of that. I do know that most

of the subsequent calls were very much a rehash of this original call. The same feelings were repeated by Max Slater.

Q. Did you ever collect the account?

A. Either I collected it or the money was mailed in, I don't know which, but I am sure that the debt was settled.

Q. Was Mr. Kraham the salesman in Chicago for Gentry at the time this occurred?

A. I don't know for sure whether he was or not.

Q. Didn't you make any attempt to find out which company had started to sell dehydrated onion and garlic to Wass Foods Products instead of Basic?

A. Yes.

Q. Did you find out?

A. Yes, I did.

Q. What company got the business?

A. Gentry.

Q. Do you know who this Gentry salesman was in the Chicago area at this time?

2418 A. No, I do not know for sure.

Q. How did you know Gentry got the business?

A. The stock was evident in the plant; the Gentry labels were visible.

Q. In your direct examination you indicated that there might have been some hard feelings on both sides when your employment with Basic was terminated. Up until the time that Mr. Slater got angry about this alleged insulting treatment, did you ever have any trouble with any of your superiors at Basic?

A. No, I think not. If you care to define, "trouble," what in particular do you have in mind?

Q. I refer to trouble by meaning those incidents which led to the breaking off of relations between you and Basic.

A. Then my answer would be no.

Q. Now when did this trouble first start? When did

these unhappy circumstances start to build up that led to a parting of the ways?

A. Approximately the latter part of 1953 or the early part of 1954.

Q. Describe them with particularity.

A. One of the accounts that I had been given to work on—

Q. Which account?

2419 A. It was Wilson & Company, which brought this about. I did work on them, I contacted them for a rather lengthy period of time. One day I was — on one occasion I was advised by the buyer that he had sent in an order which of course was a happy occasion, a first order, but I later, but I later found out that this order had not been credited to my account but had been serviced through the Milwaukee Spice Company.

Q. When did this happen?

A. As close as I can come, again I would say the latter part of 1953 or the very early part of 1954.

Q. What did you do?

A. I wrote a very strong letter to Mr. William Hume on the subject after having confronted Jim Benzies with the circumstances. I think it is notable that the owner or at least the principal executive of Milwaukee Spice Mills at that time was his brother-in-law.

Q. You were angry about this?

A. Yes. I felt that this was much time devoted to developing the account and that if the account were to be handled in that manner, then truthfully I should have been advised of it before.

Q. And you were angry at Mr. Benzies because it
2420 was his brother-in-law that got the credit for it, is that right?

A. No, I didn't say that.

Q. Were you?

A. No, not for that reason.

Q. How much money did that amount to to you—Strike that, please.

How much money do you believe you lost by this account being credited to Milwaukee Spice Mills?

A. The sum of money was insignificant. What was much more disturbing to me is was this a pattern, is this a way of doing business, is this what you are going to have, will this happen in future accounts? There was the disturbing part to me.

2421 Q. How much money was involved?

Mr. Walker: Excuse me.

Were you finished, Mr. White?

The Witness: I think so. I only want to add to that that I felt at that time if this is the pattern, then cerainly there is no future or advantage in continuing.

To answer your question regarding the amont of money, I think we are talking about $2.00 here or perhaps $1.50, perhaps 90 cents.

Again it wasn't the point of the money; it is a case of the account, the future business.

By Mr. Hays:

Q. So you wrote to Mr. Hume?

A. Yes, I did.

Q. What happened then?

A. Well, in substance I advised him if this was what might be expected, I didn't want any part of it.

Q. Then what happened?

A. Mr. Hume wrote back and said, "Well, if that's the way you feel, then we will part ways."

Mr. Walker: May I have that answer read back?

(The answer was read by the reporter as follows:

"Mr. Hume wrote back and said, 'Well, if that's the way you feel, then we will part ways.'")